No. 3436

# United States

# Circuit Court of Appeals

## For the Ninth Circuit.

F. M. HATHAWAY, and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners, Formerly Doing Business under the Firm Name and Style of EUGENE FORD AUTO COMPANY,

Appellants,

vs.

FORD MOTOR COMPANY, a Corporation,

Appellee.

# Transcript of Record.

Upon Appeal from the United States District Court for the District of Oregon.



Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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*United States Circuit Court of Appeals for the Ninth Circuit.*

F. M. HATHAWAY et al.,

Appellants,

vs.

FORD MOTOR COMPANY, a Corporation,

Appellee.

**Names and Addresses of the Attorneys of Record.**

ISHAM N. SMITH, 611–13 American Bank Building, Seattle, Washington, and CHARLES A. HARDY, Eugene, Oregon, for Appellants.

PLATT & PLATT and HUGH MONTGOMERY, Platt Building, Portland, Oregon, for Appellee.

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*In the District Court of the United States, for the District of Oregon.*

No. 7768.

FORD MOTOR COMPANY, a Corporation,

Plaintiff,

vs.

F. M. HATHAWAY, and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL, and F. M. HATHAWAY, Copartners, Formerly Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY.

Defendants.

**Citation on Appeal.**

United States of America, to the Ford Motor Company, a Corporation:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, thirty (30) days after the date of this citation, pursuant to an order allowing such appeal, filed and entered in the clerk's office of the District Court of the United States for the District of Oregon, from a final decree signed, filed and entered on July 28th, 1919, in that certain suit being in equity, No. 2932, wherein you, the said Ford Motor Company, are plaintiff and Appellee, and wherein the defendants are appellants, to show cause, if any there be, why the decree and also the order overruling the motion for rehearing and reargument, also objection to said decree, as in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in the premises.

WITNESS, The Honorable ROBERT S. BEAN, United States District Judge for the District of Oregon, this 4th day of December, 1919.

CHARLES E. WOLVERTON,

United States District Judge for the District of Oregon. [1*]

Due service of the within citation admitted in Dec., 1919.

HUGH MONTGOMERY, PLATT & PLATT,

Solicitors for Plaintiff.

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*Page-number appearing at foot of page of original certified Transcript of Record.

[Endorsed]: No. 2932. District Court of the United States, for the District of Oregon, Northern Division. Ford Motor Company, a Corporation, Plaintiff, vs. F. M. Hathaway et al., Defendants. Citation on Appeal. U. S. District Court, District of Oregon. Filed Dec. 4, 1919. G. H. Marsh, Clerk. [2]

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*In the District Court of the United States, for the District of Oregon.*

November Term, 1917.

Be It Remembered, That on the 25th day of February, 1918, there was duly filed in the District Court of the United States for the District of Oregon, a bill of complaint, in words and figures as follows, to wit: [3]

*In the District Court of the United States, for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Bill of Complaint.**

Plaintiff for its cause of action against the defendants complains and alleges as follows:

I.

That during all the times hereinafter mentioned the plaintiff was, and still is, a corporation incorporated, organized and existing under and by virtue of the laws of the State of Michigan, with its factory and place of business at Highland Park, Michigan, and has conformed to the laws of the State of Oregon authorizing foreign corporations to do business within the State of Oregon, and is a citizen and resident of the State of Michigan.

II.

That during all the times hereinafter mentioned, the defendants V. W. Winchell and F. M. Hathaway were copartners, doing business under the firm name and style of "Eugene Ford Auto Company" in the city of Eugene, State of Oregon, and were, and still are, citizens of the State [4] of Oregon.

III.

That on or about the 10th day of September, 1915, the plaintiff and defendants entered into a contract known as a "Limited Agency Contract" wherein and whereby the plaintiff appointed the defendants as its limited agents within certain territory in the State of Oregon, for the purpose of negotiating sales of Ford automobiles to users only, which said contract further provided that the same should remain in force and govern all transactions between the parties until July 31st, 1916, upon the condition, however, that either party might be at liberty to terminate and cancel the contract upon written notice by registered mail, at any time, with or without cause, a copy of which is hereto attached, marked Exhibit "A."

IV.

That on or about the 25th day of May, 1916, the plaintiff, acting under and in accordance with the provisions of said contract of agency, terminated said agency contract by letter, duly registered and forwarded to the defendants through the mails of the United States, and was ready, able and willing to perform all the conditions of said cancellation as in said Exhibit "A" required.

V.

That at the time of the cancellation of said contract, said defendants had in their possession thirty-six touring cars, and one sedan, which had been consigned by the plaintiff to said defendants under and in accordance with the provisions and upon the conditions set forth in said agency contract.

VI.

That prior to the cancellation of said contract, and on or about the 22d day of April, 1916, the 1st day of [5] May, 1916, and the 24th day of May, 1916, respectively, the said defendants, procured from the First National Bank of Eugene, Oregon, the sum of $14,000.00, evidenced by three promissory notes, bearing dates the 22d day of April, 1916, the 1st day of May, 1916, and the 24th day of May, 1916, respectively, the first note being for the sum of $2,800.00, the second note being for the sum of $2,800.00, and the third note being for the sum of $8,400.00, each of which notes was secured by a chattel mortgage upon the said thirty-six cars and one sedan, referred to in Paragraph V of this complaint, which said sums of money were in form so procured from the First Na-

tional Bank of Eugene, Oregon, by the defendants individually, although in truth and in fact the said defendants, in obtaining said sums of money, and in executing and delivering said notes and said chattel mortgage to secure the payment of the same, were acting as the agents of the plaintiff under and in accordance with the provisions of said contract referred to in Paragraph III of this bill of complaint, and said defendants, after procuring said sums of money as the agents of the plaintiff, converted the same to their own use and benefit.

VII.

That subsequently, and on or about the —— day of —— the plaintiff paid to the said First National Bank of Eugene, Oregon, the sum of $12,676.38, being the amount due upon said three promissory notes, and procured from said bank a release of the lien created by the defendants, its agents, upon said automobiles in the manner hereinbefore set forth in Paragraph VI of the complaint, and said plaintiff made such payments to said First National Bank of Eugene, Oregon, of the said sum of [6] $12,676.38, because the said defendants had refused to make such payment and thereby release said automobiles from the lien so created thereon by the said defendants, and said defendants, as the agents of the plaintiff, have received and still have in their possession the sum of $12,676.38, so received from the said First National Bank of Eugene, Oregon, and have refused, and still refuse, to pay said sum of money, or any part thereof, to the plaintiff herein, although demand has been made therefor, and although the plaintiff has paid said

sum to the said First National Bank of Eugene, Oregon, and has secured from said bank a release of the lien imposed upon the said automobiles, which were owned by the plaintiff at the time when said chattel lien was imposed thereon by the defendants as the agents of the plaintiff, and the said defendants have received the sum of $12,676.38, or the double payment of said amount on said notes, and have received the possession of the sum of $12,676.38, which in equity and good conscience belongs to the plaintiff, and the amount of money so paid by the plaintiff to the First National Bank of Eugene, Oregon, as in Paragraph VI of this bill of complaint set forth, constituted a portion of the amount of money to which the defendants were entitled under and by virtue of the terms of the agreement referred to in Paragraph III of this bill of complaint by way of tender upon the concellation of said contract by the plaintiff, as in Paragraph IV of this bill of complaint alleged, and the plaintiff has made an offer in writing to pay to the defendants the particular sums of money to which the defendants are entitled by reason of the cancellation by the plaintiff of the contract set forth in Paragraph III of this bill of complaint, which offer the defendants have at all times refused to accept, and which [7] offer the plaintiff has at all times since been, and still is, ready, willing and able to carry out, in the manner alleged in Paragraph VI of this bill of complaint.

VIII.

That said defendants, and each of them, are at the present time insolvent and have no means whereby to

satisfy the payment of said sum of money, or any portion thereof, so due and owing from the defendants to the plaintiff.

IX.

That on or about the 11th day of September, 1916, the defendants obtained a judgment in the District Court of the United States for the District of Oregon, against the plaintiff, in the sum of $22,146.05, and said defendants are about to obtain execution upon said judgment, and levy the same upon the property of the plaintiff, and if said defendants are allowed to proceed with said levy, the plaintiff will be deprived of any method of obtaining the payment from the said defendants of the said $12,676.38, to plaintiff's great and irreparable damage, and the plaintiff has at all times since, and still is, ready, willing and able to pay to the defendants the amount of said judgment, less the said sum of $12,676.38.

X.

That this is a controversy between citizens of different States and involves more than $3,000.00 exclusive of interest and costs.

XI.

That plaintiff has no plain, speedy or adequate remedy at law, but only in equity.

WHEREFORE, plaintiff prays: [8]

1. For a decree and judgment in favor of the plaintiff and against the defendants in the sum of $12,676.38.

2. That the said sum of $12,676.38 be offset against the judgment held by the defendants against the plaintiff in the sum of $22,146.05.

3. For a temporary restraining order restraining defendants from levying execution upon the property of the plaintiff on that certain judgment made and entered by the United States District Court, for the District of Oregon, on the 11th day of September, 1916, in favor of the defendants and against the plaintiff, and for an order setting a day certain for said defendants to appear and show cause why said temporary restraining order should not be made permanent.

4. That this Honorable Court may grant unto the plaintiff a writ of subpoena of the United States, directed to the defendants V. W. Winchell and F. M. Hathaway, therein and thereby commanding said defendants, under a certain penalty therein to be named, personally to be and appear before your Honorable Court, then and there to answer all and singular the matters and things aforesaid, and to stand and abide by, and sustain such direction and decree as shall be made herein as to this Court may seem equitable and just.

5. For such other and further relief as to the Court may seem equitable and proper.

PLATT & PLATT,
Solicitors for Plaintiff.

HUGH MONTGOMERY,
Of Counsel. [9]

**Plaintiff's Exhibit "A."**

1915—Limited Agency Contract—1916

THIS AGREEMENT, made at Highland Park, Michigan, this 10th day of September, 1915, by and

between the Ford Motor Company, a Michigan corporation of Highland Park, Michigan, hereinafter known as the first party, and Eugene Ford Auto Co., of Eugene, in the State of Oregon, hereinafter known as the second party, WITNESSETH:

WHEREAS, the first party is the manufacturer of a line of Automobiles known as Ford automobiles and also of automobile parts and accessories, and

WHEREAS, the second party has applied to the first party to be the agent in certain territory hereinafter described, for the sale of said Ford automobiles and parts, and first party is willing to appoint second party, with certain limited authority and upon the following terms and conditions only:

NOW, THEREFORE, this witnesseth:

APPOINTMENT AS LIMITED AGENT.

(1) That first party hereby appoints second party its "Limited Agent" with certain authority as herein expressly stated only, for the purpose of negotiation sales of first party's product to users only, in the methods and upon the terms and within the territory herein specifically set forth.

POWERS.

(2) That second party shall have no authority or power or duty whatsoever, except as herein expressly conferred.

AUTOS ON CONSIGNMENT.

(3) That first party will consign *ts* Ford automobiles to second party to be sold to users only, and not for re-sale, upon bills of sale to be executed by the first party only, as hereinafter provided.

TERRITORY.

(4) The second party shall arrange for sales of Ford automobiles only to residents of the following specified territory shown on the attached map, and to no other, namely: [10]

* * * * * * * * *

The entire territory, including that of the Sub-limited Agents, shall consist of the following, namely:

(4) All of Lane County except extreme western portion of townships in R–10–W, R–11–W and R–12–W; portion of Douglas County Tier, T–9–S in R–6–W to R–9–W; Tier T–20–S R–4–W to R–9–W; Tier T–21–S, R–4–W to R–9–W inclusive. Portion Lane County as follows: T–15–S R–9–W, T–16–S R–8–W, T–16–S R–9–W, Tier of (288 cars) T–15–S R–1–W and R–1–E to R–8–E; Tier T–16–S, R–1–W to R–3–W inclusive. Tier T–16–S R–1–E to R–8–E inclusive. Tier T–17–S R–1–W to R–9–W inclusive. Tier T–16–S R–1–E to R–8–E inclusive. Tier T–17–S R–1–W to R–9–W inclusive. Tier T–17–S R–1–E to R–8–E inclusive. Tier T–18–S R–5–W to R–9–W inclusive. Tier (170 cars) T–17–S R–1–E to R–8–E inclusive. Tier 18–S R–5–W to R–9–W inclusive. Tier T 18–S R–1–E to R–7–E inclusive. Tier T–19–S–R–1–E to R–7–E inclusive. T–19–S R–7–W north half of T–18–S R–1– and 2 W. Portion of Northern part of Douglas County, being townships lying north of Tier T–22–S within ranges 4–W to 9–W, southern part of Lane County lying south of Tier T–19–S; also Tier T–19–S in R–1–W to R–6–W inclusive. The southern half of T–18–S

R–1–W, and T–18–S in R–2–W, Tier T–15–S and Tier T–16–S in R–4–W to R–7–W inclusive, also the town of Springfield, (118 cars).

The retail territory, that is, the territory wherein second party arranges direct sales (and in which no Sublimited Agents are appointed) consists of the following, namely ———————————————

———————————————

———————————————

The remainder of said entire territory shall be known as wholesale territory wherein shall be appointed Sublimited Agents as herein provided, namely ———————————————

———————————————

———————————————

RESIDENCE DEFINED.

In this connection it shall be construed that a purchaser resides at either (a) his legal domicile; (b) the place where he sojourns for not less than three consecutive months; (c) his permanent place of business or occupation; or (d) either home where more than one is maintained. The decision of the first party in all violations of this subdivision shall be final and conclusive, with no recourse or appeal on the part of the second party.

DAMAGES FOR BREACH TERRITORIAL RESTRICTIONS.

(5) The sales of Ford automobiles to residents outside of second party's own territory is a serious trespass upon the rights and earnings of other Limited Agents and Sublimited Agents, and tends to destroy the organization and business of the first party, and therefore, it is agreed that the territorial restrictions and limits set forth herein are of vital

consequence to the first party and its business, as well as to the business of all other Limited Agents and Sublimited Agents and therefore, for any and each violation of the same by the second party, second party hereby agrees to pay to the first party the sum of two hundred fifty dollars ($250.00) as and for liquidated damages. Said sum or sums may be deducted from any deposit he may have with the first party, or from any sums which first party may owe for business done, to second party. First party may also cancel this contract for any such violation. [11]

PRICES.

(6) Second party shall arrange for sales of Ford automobiles to users at the first party's full advertised list prices only, current at date of sale, plus fifty-three and 25/100 dollars ($53.25) for each automobile for freight charges and delivery expenses, plus the amount, if any, of present or future United States tax or excise upon or in respect of each automobile or sale thereof. Wherever the words "List Price" are used herein they mean the latest retail selling price established or fixed by the first party.

SALES OF AUTOS FOR CASH ONLY.

(7) Second party shall arrange all sales of Ford automobiles for cash only; but if second party should accept anything but cash payment on Ford automobiles, it must be upon his own responsibility and for his own account solely, and he must remit cash only to first party.

REBATES FORBIDDEN.

(8) Second party will not render any service or

supply any goods either gratis or at reduced prices, nor do or permit any act whatsoever either directly or indirectly or through other parties that would directly or indirectly have the effect of reducing the said current advertised list prices of Ford automobiles, plus freight and delivery charges, and said United States tax or excise, if any, and in the event of a breach or violation hereof, second party shall pay to the first party the sum of two hundred fifty dollars ($250.00) for every such breach or violation as and for liquidated damages arising to the first party and its business by reason of such breach or violation, or the same sum may be deducted from any moneys in first party's hands belonging to second party on which first party may owe, for business done, to second party. First party may also cancel this contract for any such violation.

CHANGES IN PRICES.

(9) The first party may change the list prices of any of its products at any time it may choose, and second party shall conform to such changes immediately upon receiving notice thereof and in case of increase or deduction in such list prices, first party shall not be bound to make any allowance to second party in cases of automobiles shipped before such changes take effect, and the second party's commissions on automobiles yet unsold by him shall be the difference between the eighty-five per cent (85%) advanced by him on such automobiles and the new selling price; provided, that in case of a reduction in price the first party will allow to second party a proportionate rebate on his advances made on such

automobiles as still remain unsold in his possession at the date of such reduction as to automobiles shipped to the second party within thirty days immediately before such date, but none as to those shipped prior to such thirty day period.

ADVANCES.

(10) Second party shall advance in cash to first party eighty-five per cent (85%) of the full advertised list price at the time of the consignment of its automobiles by first party to second party. [12]

FREIGHT.

(11) Second party shall pay the freight from Detroit or branch factory and advance freight, if any, as the case may be, to second party's place of business.

TITLE OF AUTOS.

(12) First party shall retain all and complete title to each automobile until actual bill of sale signed and executed by first party, has been delivered to the vendee, who shall be only a user; that is one who has purchased for immediate use and not for re-sale the Ford automobile, at full advertised list price, plus freight and delivery charges, and said United States tax or excise, if any, and without rebate, donation or drawback of any character whatsoever. And any attempt to sell or dispose of or deliver any Ford automobile at less than such price shall be utterly void and shall pass no title whatsoever.

LIEN FOR ADVANCES—INSURANCE.

(13) Second party shall have a lien on each Ford automobile for the eighty-five per cent (85%) advanced by him on the same, and for freight paid by

him on the same, and he shall keep and maintain insurance so as to protect himself against loss.

RETAIL BUYERS' ORDERS.

(14) Second party shall take from each proposed purchaser of a Ford automobile and immediately forward to first party a written order duly signed by him, upon the regular blank "Retail Buyer's Order," furnished by first party, without alterations or changes except the filling in of blanks, and second party will make no arrangement for the sale of a Ford automobile without taking such written signed order.

DEPOSITS ON AUTOS.

(15) All deposits of money, checks, etc., on Ford automobiles made by proposed buyers shall be remitted immediately when received with the Retail Buyer's Order to the first party who shall be the custodian thereof and first party will make proper disposition thereof when the transaction is closed according to the rights of all parties.

COMPANY MAY REJECT ORDERS.

(16) The dealings of the second party with a proposed purchaser of an automobile or the taking of a signed order blank as herein required of a deposit or both, shall not constitute a sale, nor shall first party be bound to accept such order, but first party may wholly reject the same for any reason satisfactory to first party, and the proposed purchaser shall acquire no rights whatever in the automobile until delivery of the duly executed bill of sale as herein provided.

WEEKLY REPORTS OF BUSINESS.

(17) The second party shall report each week to

first party all Ford automobiles contracted for by him with purchasers under this agreement, including all sales by Sublimited Agents and their purchasers, giving motor number and description of each automobile sold or contracted for, the date of sale and full name and address of each purchaser. [13]

WARRANTY.

(18) Second party shall have no authority to make any warranty whatsoever of Ford automobiles, but the purchaser shall be referred to the provisions of the Retail Buyer's Order and Bill of Sale in that behalf. Second party shall have no authority to make any warranty representing first party, of any parts or accessories. The current printed literature issued by the first party will contain the only warranties of parts or accessories made by the first party.

REPRESENTATIONS.

(19) The second party shall make no representations as to Ford automobiles or parts or accessories, except the same as are set forth in the printed literature issued by the first party. If second party violates these provisions he may be personally liable, but shall not in any wise bind the first party.

CLAIMS AGAINST CARRIERS.

(20) In case of damage to automobiles by carriers in transit to second party, collection from the carrier shall be made in the name of the first party as the owner of such automobiles—but as between the parties hereto, the second party shall be entitled to eighty-five per cent (85%) of the amounts realized, less the like proportion of expenses of collection, or the first party may, at its option, assign to second

party all its claims in such matter, whereupon second party shall present and prosecute his own claim without any liability of the first party, and it is stipulated that first party shall not be liable to the second party for any injury or damage to the automobile after it is once delivered to the carrier or for any return of the advances thereon.

KEEP PLACE OF BUSINESS.

21) That second party will maintain on his own account and at his own expense, a place of business and properly equipped repair shop prominently located in Eugene for the purpose of conducting such Limited Agency business, and shall employ competent and efficient salesmen, and first party shall not in any wise be responsible for the charges connected with such place of business, nor shall second party have any authority to render first party responsible for the rent, taxes, wages, or other charges or liabilities of any nature whatsoever arising out of such business or in connection with such place of business.

THEFT OR DAMAGE TO AUTOS. WILL SELL ALL AUTOS. CLAIMS BY THIRD PERSONS.

(22) Second party shall safely keep and he hereby agrees to save first party harmless against them for damage of any kind to said Ford automobiles while in his possession under consignment, and in consideration of his being granted this agency he expressly agrees that he will bear all damages or injury arising from theft, accident, injury or other cause to said automobiles so consigned to him while

in his possession, or while in transit from first party to second party. Inasmuch as first party bases its output and expenditures upon the orders given by its Limited and Sublimited Agents, therefore and in consideration of this contract [14] the second party hereby agrees to arrange sales under the terms of this contract and by and in accordance with the methods herein provided, of all the automobiles consigned and delivered to him pursuant to his orders for the same, and first party shall not be liable to return to second party his advances on same. The second party also agrees to save first party harmless against any and all claims made against first party by any person or persons not parties hereto for damages arising out of the conduct of second party's said business or Limited Agency whether from accident or injury or collision or loading or unloading or driving or theft or fire or from any cause of any and every nature whatsoever.

TAXES.

(23) The second party shall, as a part of the expenses of his business, pay any taxes that may be levied upon or against or on account of such business or his stock, or of any of such automobiles as may be in his possession or in transit on bill of lading, or otherwise, for delivery to him.

SIGNS, ADVERTISEMENTS.

(24) The second party agrees to conspicuously display signs on and in his building and windows designating that he is the "Limited Agent for Ford cars" for the territory specified herein, and he shall advertise the first party's product effectively in the

local papers and give his immediate and careful attention to all inquiries, and give good representation to all interests of first party in the territory aforesaid. Second party agrees not to advertise or trade in the first party's product in such a way as to be an annoyance or injurious to first party or any of its duly appointed Limited Agents or Sublimited Agents, and that he will not repeat any such advertisements or publish any form of advertising containing matter to which the first party has objected, and that he will follow as closely as possible the advertising copy provided from time to time by the first party. When agency of second party is cancelled or terminated he agrees to remove all such signs and cease such advertising.

REPAIRS, NUMBER PLATES, ETC.

(25) Second party agrees that he will make repairs on all Ford automobiles in his territory, or coming into his territory, whether sold through him or not, and to perform this work promptly and in a workmanlike manner, and that he will not remove or alter the first party's patent plate, motor number or other numbers or marks fixed to any Ford automobile, or suffer the same to be done, and that he will not materially change any automobile consigned to him by the first party.

DEMONSTRATOR.

(26) Second party agrees to purchase from first party for himself and keep in use at all times at least one Ford automobile of the current year's model for the sole purpose of demonstration and exhibition to intending purchasers and to maintain same in proper

running condition and good, clean order and repair at all times. If he sells said automobile before the same has been in actual use three months, second party agrees that he will sell the same at the full advertised list price only, and within his own territory only, as provided in subdivisions four, six and eight hereof. For any breach of this provision the [15] second party shall pay to first party two hundred fifty dollars ($250.00) as reasonable liquidated damages. The only warranty of such demonstrator or service cars by the first party is agreed to be the same as that given by first party on automobiles sold to the general public and which is printed on the Retail Buyer's Order.

PATENTS.

(27) First party owns, and the Ford automobiles are manufactured under and embody the following letters patent of United States or some of them, namely:

United States Letters Patent No. 747,909, issued December 22, 1903.

United States Letters Patent No. 773,934, issued November 1, 1904.

United States Letters Patent No. 787,908, issued April 25, 1905.

United States Letters Patent No. 847,405, issued March 19, 1907.

United States Letters Patent No. 879,757, issued February 18, 1908.

United States Letters Patent No. 1,005,186, issued October 10, 1911.

United States Letters Patent No. 1,012,620, issued December 26, 1911.

United States Letters Patent No. 1,044,038, issued November 12, 1912.

United States Letters Patent No. 1,066,729, issued July 8, 1913.

United States Letters Patent No. 1,073,569, issued September 16, 1913.

United States Letters Patent No. 1,075,557, issued October 14, 1913.

United States Letters Patent No. 1,078,042, issued November 11, 1913.

United States Letters Patent No. 1,098,361, issued May 26, 1914.

—and of applications for letters patent now pending and undetermined, first party further owns, and Ford automobiles, parts and accessories are manufactured and sold under and embody the exclusive right to the use of the name "FORD" acquired by and through United States copyright and trademark registration numbers 74,530, issued July 20, 1909, (script word "FORD"), and 98,655, issued July 28th, 1914 (winged pyramid design), together with the rights acquired and established thereto by and through fair trade and trade user. The validity of each of said patents and of the said copyright, registration and trade user rights, and of the claims of the first party under said applications is hereby expressly admitted; and it is agreed that the sale and use of said automobiles as delivered to the second party are restricted according to the terms of this agreement of agency, and that no license to handle or use said automobiles under such patents and applications, except strictly in accordance with the terms and conditions of this contract, is given; that second

party's right to handle and deliver said automobiles embodying said patents and inventions, is restricted and limited by this contract in its terms, and that no person shall acquire the right to use said automobiles or to own the same if there be any violation of the territorial or price restrictions as set forth herein; and any such violation shall constitute an infringement of each and every of said patents, applications and inventions.

COMMISSIONS.

(28) As second party's commission for making such sales of Ford automobiles, first party will, after payment by the purchaser, allow to second party (except in the cases specified in subdivision nine hereof) fifteen per cent (15%) of such full advertised list price, and will allow to second party such freight and delivery charges, and United States tax or excise, if any, as aforesaid. [16]

ADDITIONAL COMMISSIONS.

(29) First party agrees to allow and pay to second party the following additional commissions on the net amount of business he shall do hereunder during the term of this agreement, upon Ford automobiles, but not on Ford parts, repairs or accessories, namely: No added commissions whatever when his said business shall total less than $5,000.00, but when the second party shall have done such business (not including freight charges and not including his fifteen per cent (15%) commission to the amount of $5,000.00, his right to additional commissions shall begin, and he shall be entitled to such added commissions as follows: On all such business totaling less than $10,-

000.00, one per cent (1%); if $10,000.00 and less than $20,000.00, two per cent (2%) on all such business; if $20,000.00 and less than $35,000.00, three per cent (3%) on all such business; if $35,000.00 and less than $50,000.00, four per cent (4%) on all such business; if $50,000.00 or more, five per cent (5%) on all such business. That is, for illustration, if he shall have done $7,000.00 total business as above described, his commission shall be one per cent (1%) on all of such $7,000.00. If, for illustration, his total business as above described shall be $34,900.00, his commission shall be three per cent (3%) on all of such $34,900.00. If $49,900.00 then four per cent (4%) upon all of such $49,900.00; if it shall total $50,000.00, then five per cent (5%) on all of such $50,000.00 and likewise five per cent (5%) upon all such business over $50,000.00. If any payments shall have been made to second party during the year on the one per cent (1%) basis or any lower basis than he shall finally be entitled to, such payments shall be credited on the final amount owing him and shall be deducted when he becomes entitled, to and shall receive the higher percentage.

PAYMENTS TO SUBLIMITED AGENTS SECURED.

(30) It is agreed that such added commissions shall not be paid to second party until the second party shall have furnished satisfactory evidence to first party that all commissions and added commissions due or owing or which may later become due or owing the Sublimited Agents under the second party have been fully paid, or until satisfactory

arrangements are made with the first party to insure Sublimited Agents being paid the commissions and added commissions which may be due or become due to them under their respective contracts.

COMPANY MAY SELL DIRECT.

(31) First party hereby expressly reserves to itself the right to make direct sales to customers in the territory above described, and in such case will pay one (and only one) commission of five per cent (5%) of the list price of the automobile or automobiles so sold, after it shall have received the full purchase price in cash, to the second party, or if there shall be a Sublimited Agent in that special territory and locality where such sale is made, then such five per cent (5%) shall be paid to such Sub-Limited Agent. This provision shall not apply to sales of parts or accessories, which are otherwise provided for herein, nor shall it apply to sales to or through Sublimited Agents, but only to these made by first party directly to purchaser domiciled or residing in said territory within the meaning of Sec. 4 of this agreement. First party shall not pay any commission to second party or his Sublimited Agents on any sales to residents outside second party's territory, even though delivery should be made within said territory to residents of such other territory. [17]

STOCK OF FORD PARTS.

(32) Second party agrees that he will purchase from the first party on his own account and carry on hand at second party's place of business aforesaid, a stock of Ford parts that will inventory at all

times during the term of this agency contract not less than Two Thousand Dollars ($2,000.00) at the list price, and first party shall have the right to send its representative to inventory such stock of Ford parts as second party may have on hand at any time during the term of this contract. First party may cancel this contract for any breach of this provision. Inasmuch as the reputation of Ford cars is often injured by the use therein of inferior parts not made or furnished by the Ford Motor Company, therefore, the second party also hereby agrees that all his purchase of parts for Ford automobiles shall be made, as to all parts listed in its parts catalogue, exclusively from the first party, and that he will not use, sell or recommend to Ford owners similar parts manufactured by others.

DISCOUNT ON PARTS.

(33) First party agrees to allow the second party a discount of twenty-five per cent (25%) on all parts of Ford automobiles listed in the Ford parts price lists, excepting on bodies, on which the discount shall be fifteen per cent (15%) only. These discounts are allowed in consideration of second party's agreement to carry stock as provided in subdivision thirty-two as above, and in consideration of the other provisions of this contract.

First party agrees to allow second party an additional discount of ten per cent (10%) on all Ford parts sold by second party at wholesale to Sub-Limited Agents under him; said additional ten per cent (10%) to be credited by first party monthly on receipt by it of certified itemized statement of

such sales and deliveries made during the previous month by the second party.

RETURN OF PARTS.

(34) The second party shall have the right and privilege of returning to first party at the place of purchase at any time during the term of this contract, or within thirty days after its cancellation or expiration, but at his own expense, for credit at the purchase price, all such new parts of first party's automobiles as he may desire, except bodies, tops, tires, lamps, generators, speedometers, windshields and other equipment known in the trade as "accessories," provided same are in as good condition as when sold by the first party to the second party.

COMPANY MAY SELL PARTS.

(35) First party reserves the right and privilege to sell and deliver or cause to be sold and delivered any parts of Ford automobiles, repairs, accessories, or other goods that may be ordered from it by any person or persons within the territory covered by this agreement, without the payment of any profit or allowance or any discount or credit whatever to the second party upon such sales. It is expected and intended that second party will carry the stock of Ford parts, repairs and accessories as herein provided, and that nearly all orders for such parts, repairs, and accessories will be placed with him by all persons in the above described territory. [18]

CLAIMS.

(36) It is further agreed that no claims regarding errors in shipments or billings are to be recog-

nized by first party, unless received in writing by it from the second party within ten days after receipt of the goods by the second party.

CRATING, etc., EXTRA.

(37) The first party will be entitled to receive an extra charge for crating, packing, double decking and loading, which the second party shall stand and pay as a part of the expenses of conducting his business.

DELAYS IN SHIPMENTS.

(38) The first party shall not be liable in any way for delayed shipments of any goods ordered or on account of shipments by any other than a specified route.

PAYMENTS AT HOME OR BRANCH OFFICE.

(39) The second party agrees to take up all sight drafts with exchange drawn on him by the first party for automobile consignments or for shipments of parts, when shipments arrive or when sight drafts are presented, the intent hereof being that payments are to be made to the first party at its home or branch office, but if it elects to draw drafts, the same will be honored with exchange by second party.

DEPOSITS.

(40) As a guarantee of the full and faithful performance by the second party of all the terms and conditions of this agreement, the second party has deposited with the first party the sum of eight hundred dollars ($800.00) in cash, and it is agreed that the first party may, at its option, apply any part or all of said amount towards the liquidation of any

past due accounts owing by second party to first party, or any other legitimate claims arising from the second party's failing to perform the obligations of this agreement, and the balance of said contract deposit, if any, shall be returned to the second party at the termination of this agreement and the fulfillment of all its requirements. In case of cancellation or termination of this contract as herein provided, such deposit balance on hand may be retained by first party as security for and until the fulfillment of all the provisions hereof as to the winding up of the business of the agency and final disposition of all unsold cars as stipulated herein. Second party shall not be at liberty to treat said deposit as an offset against any accounts owing by him to first party.

ESTIMATE OF AUTOS REQUIRED.

(41) In order that first party may determine the prospective requirements of its business for the business year ending July 31, 1916, and may base its contracts for materials, etc., thereon, the second party agrees that he will require consignments of not less than 288 Ford automobiles for this said entire territory between the date hereof and July 31, 1916, to be shipped in the various months as per the following schedule, and he hereby makes requisition for such automobiles to be shipped as stated, namely: [19]

For his wholesale and retail territory, respectively, as follows:

In August, 1915, wholesale territory..... 22 Autos
In August, 1915, retail territory..... 8 Autos
In September, 1915, wholesale territory.. 16 Autos
In September, 1915, retail territory..... 24 Autos

In October, 1915, wholesale territory..... 2 Autos
In October, 1915, retail territory..... 24 Autos
In November, 1915, wholesale territory... 0 Autos
In November, 1915, retail territory..... 8 Autos
In December, 1915, wholesale territory... 0 Autos
In December, 1915, retail territory..... 8 Autos
In January, 1916, wholesale territory..... 18 Autos
In January, 1916, retail territory..... 16 Autos
In February, 1916, wholesale territory.... 0 Autos
In February, 1916, retail territory..... 8 Autos
In March, 1916, wholesale territory..... 2 Autos
In March, 1916, retail territory..... 38 Autos
In April, 1916, wholesale territory..... 24 Autos
In April, 1916, retail territory..... 24 Autos
In May, 1916, wholesale territory..... 8 Autos
In May, 1916, retail territory..... 16 Autos
In June, 1916, retail territory..... 6 Autos
In June, 1916, wholesale territory..... 8 Autos
In July, 1916, wholesale territory..... 8 Autos
In July, 1916, retail territory..... 0 Autos

REQUISITIONS MAY BE DECLINED.

(42) First party agrees that the foregoing requisitions of the second party will receive first party's careful and good faith attention, but first party does not agree absolutely to fill them, but expressly reserves the right to refuse them from time to time, or such parts of them as the first party deems necessary or proper, and all such requisitions are subject to delays occurring from any cause whatsoever in the manufacture and delivery of its product—no legal liability to fill such requisitions being incurred under any circumstances. And the second party

may cancel, upon one month's full written notice to first party, the said requisitions, or what remains unfilled thereof.

PRICES MAY BE CHANGED.

(43) It is further agreed that the foregoing requisitions for consignments of Ford automobiles are given by second party and received by first party subject to the express condition that prices are subject to be changed by the first party at any time during the year and deposits are so accepted; in the event of changes, however, the second party may cancel such remaining requisitions, and may demand and receive back from the first party such deposits as may have previously been made, less any amounts for which second party may be obligated or owing, either directly or indirectly to the first party.

SUBAGENCIES.

(44) Second party shall appoint a Sublimited Agent or establish a properly equipped branch or garage for the sale and repair of Ford automobiles in every such city or town within the above described territory as shall at any time or [20] from time to time be designated by first party, in order that first party shall have adequate representation therein, and so that the public shall have at hand facilities for purchasing Ford automobiles, parts, repairs, accessories and supplies, and if second party fails to secure such Sublimited Agents, or establish branches as herein provided, then first party may do so, or first party may take such territory entirely away from second party, or first party may sell direct its automobiles, parts, accessories, etc., in such un-

occupied territory, in any of which cases the second party shall not claim or be entitled to any commissions on business so handled.

SUBLIMITED AGENTS' COMMISSIONS.
SUBLIMITED AGENTS' CONTRACTS.

(45) The second party shall allow and pay the Sublimited Agents the regular Limited Agents' commissions on the net volume of business done, and will require each Sublimited Agent to execute the Sublimited Agent's agreement provided in blank by first party in triplicate, and shall within three days after the execution thereof transmit in triplicate said agreement, properly executed, to first party for its approval and signature, and upon being executed by the first party, one copy each shall be delivered and kept by the first party and second party hereto, and said Sublimited Agent. No arrangement or agreement made by second party with any Sublimited Agents shall be in any manner binding upon the first party until it shall have been reduced in writing on such blank aforesaid and approved and signed in triplicate by first party's duly authorized executive officer and delivered as aforesaid, and second party further agrees not to enter into any private arrangement or agreement with any party or parties to act as his Sublimited Agent except as herein provided. All Ford automobiles sold by first party through the Sublimited Agents of the second party, appointed and authorized as aforesaid, shall be considered as taken by the second party as a portion of the Ford automobiles handled by him under this contract.

DEPOSITS OF SUBLIMITED AGENTS.

(46) The first party shall be custodian of all contract deposits made by the Sublimited Agents and of all deposits made by proposed buyers, and in the event of the termination or cancellation of this contract, second party shall have no claim whatsoever, directly or indirectly, against first party for such deposit moneys, whether such deposits are made through the second party or directly by the Sublimited Agents or buyers themselves. When deposit moneys are transmitted to the first party by the second party, second party shall specify whose money the same is, and on what particular contract or Retail Buyer's Order such deposit is being made.

NO ASSIGNMENT.

(47) The second party shall have no right to assign this contract or any interest in the same, without the written consent of the first party.

CANCELLATION.

(48) This contract shall continue in force and govern all transactions between the parties until July 31, 1916, but it is agreed that either party shall be at liberty, with or without cause, to cancel and annul this contract at any time upon written notice by registered mail to the other party, and such cancellation shall also operate as [21] a cancellation of all orders for automobiles, automobile parts, or attachments which may have been received by the first party from the second party prior to the date when such cancellation takes effect.

SALE OF AUTOS ON HAND AT TIME OF TERMINATION.

(49) In case of the cancellation or expiration of this contract the first party may at its option retake possession of all such of the aforesaid automobiles as second party may have on hand on consignment, unsold at the date of such cancellation or expiration at the same time returning to him his advancements on the said automobiles; or at the option of the first party it shall be the duty of the second party and he undertakes (for the purpose of winding up the affairs of his said Limited Agency) to take orders for the sale of such automobiles as he may have on hand unsold at the time of such cancellation or expiration the same to be made strictly under and in accordance with the terms of this contract provided however, if, after reasonable effort on the part of second party to make such sale there shall remain on hand any such automobiles unsold after three months from date of such cancellation or expiration, then on request by second party and payment by him to first party of ten per cent (10%) additional of the list price first party will sell said automobiles to said second party and give him bill of sale thereof for his own use or for such other disposition as he may choose to make.

PERFORMANCE OF SUBLIMITED AGENCY CONTRACTS.

(50) In case of cancellation of this contract first party will carry out all such contracts made with Sublimited Agents under the second party, as were made with the approval of the first party as herein

provided, the intent being that the first party shall take the same off the hands of second party.

TERMINATION.

(51) Upon termination of this contract, whether by expiration or cancellation, all liability on the part of the first party, shall, except as to matters pending at the date of such termination, cease, and determine, and the second party shall have no claim to commission, rebate or damage, notwithstanding transactions may thereafter take place with or sales be made to parties with whom the second part shall have dealt during the currency of this contract.

NO WAIVER OF THESE PROVISIONS.

(52) The failure of the first party to enforce at any time any of the provisions of this contract, or to exercise any option which is herein provided, or to require at any time performance by the second party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this contract or any part thereof, or the right of the first party to thereafter enforce each and every such provision.

MICHIGAN CONTRACT.

(53) This contract, it is agreed, is a Michigan contract and shall be construed as such. [22]

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

Signatures of the first party.

FORD MOTOR COMPANY.
By W. A. RYAN–A (L. S.)
Manager of Sales.
Approved F. B. NORMAN,
Branch Manager.
O. K.'d J. S. BECKHARDT,
Accounting.
Ckf. and App. E. W.,
Sales.

Signatures of the second party.

EUGENE FORD AUTO CO. (L. S.)
By F. M. HATHAWAY (L. S.)
Witness: CHAS. E. GODON,
FIRST NATIONAL BANK,
(Name of Limited Agent's Bank.)

Trial Balance July 31, 1915.
C. R. Aug. 13, 1915, Page 15.
C. R. Sep. 9, Page 40.

State of Oregon,
County of Multnomah,—ss.

I, Alva W. Jones, being first duly sworn, depose and say that I am the manager of the Local Branch of the Ford Motor Company located at Portland, Oregon, and the managing agent of the Ford Motor Company for the State of Oregon, and that the foregoing bill of complaint is true, as I verily believe.

ALVA W. JONES.

Subscribed and sworn to before me this 25th day of February, 1918.

[Seal] C. G. BUCKINGHAM,
Notary Public for Oregon.

My commission expires 6/23/20.

[Endorsed]: Filed Feb. 25, 1918. G. H. Marsh. [23]

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AND AFTERWARDS, to wit, on the 25th day of February, 1918, there was duly filed in said court a motion for order to show cause and for restraining order, in words and figures as follows, to wit: [24]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,

Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,

Defendants.

**Motion for Order to Show Cause and Temporary Restraining Order.**

COMES NOW, the plaintiff above named and moves the Court for an order to show cause, requiring the defendants above named and each of them, to appear before this Court on a day certain to be named, and show cause, if any, why they should not be restrained from levying execution upon a certain judgment entered in favor of the defendants and against the plaintiff on the 11th day of September, 1916, by the District Court of the United States for the District of Oregon, pending the determination of

the above-entitled suit, and for a temporary restraining order restraining said defendants, and each of them, from levying execution, upon that certain judgment made and entered in favor of the defendants and against the plaintiff in the District Court of the United States, for the District of Oregon, on the 11th day of September, 1916, and entered in Book 27, page 139, of the Journal Records of the above-entitled [25] court and in support of this motion, submits the affidavit hereto attached.

PLATT & PLATT,
Solicitors for Plaintiff.

HUGH MONTGOMERY,
Of Counsel [26]

**Affidavit of Alva W. Jones in Support of Motion for Order to Show Cause and Temporary Restraining Order.**

State of Oregon,
County of Multnomah,—ss.

I, Alva W. Jones, being first duly sworn, depose and say that I am the manager of the branch of the Ford Motor Company, plaintiff above named, which is located at Portland, Oregon; that on or about the —— day of May, 1916, the Ford Motor Company paid to the First National Bank of Eugene, Oregon, the sum of $12,676.38, in payment of three promissory notes, bearing date April 22nd, 1916, May 1st, 1916, and May 24th, 1916, respectively; the first of said notes being for the sum of $2800.00, the second of said notes being for the sum of $2800.00, the third of said notes being for the sum of $8400.00, and the sum of $12,676.38 being the balance due upon said notes at the time when the said plaintiff made said

payment, and that the plaintiff made said payment to the First National Bank of Eugene, Oregon, for the purpose of releasing 36 Ford touring cars and 1 Ford Sedan from the lien of three chattel mortgages given to secure the payment of each of said promissory notes, which notes and the said chattel mortgages, creating a lien upon the said automobiles, were executed and delivered to the said First National Bank of Eugene, Oregon, by the defendants above named at a time when said defendants were the agents of the Ford Motor Company for the purpose of selling and distributing Ford cars within certain specified territory in Lane County, Oregon, and that the said payment of the said notes by the plaintiff above named to the First National Bank of Eugene, Oregon, was so made by the plaintiff for the purpose of releasing said automobiles from the chattel lien which had been imposed thereon by the defendants above [27] named during the period of time when they were the agents of the Ford Motor Company in a portion of Lane County, Oregon, and that the said defendants received the face value of said notes from the First National Bank of Eugene, Oregon, and likewise received the benefit of the payment of said $12,676.38, so made by the plaintiff above named as their principal, and said defendants at all times refused to pay to the plaintiff above named the said sum of $12,676.38, or any portion thereof, and I am informed and believe, and therefore allege the fact to be that the defendants are at the present time insolvent and that if they are not restrained from levying execution against the plaintiff above named on

the judgment of this Court in the sum of $22,146.05, which they now hold against the plaintiff, that plaintiff will be unable to recover from said defendants the sum of $12,676.38, or any portion thereof, and I further allege that no consideration has passed from the plaintiff to the defendants or from the defendants to the plaintiff for the payment of the said sum of $12,676.38, which payment of money was made by the plaintiff above named for the purpose of releasing its property from the chattel lien which the defendants, as its agents, had imposed thereon.

I further depose and say that the contract of agency existing between the plaintiff and the defendants at the time when the said payment of $12,676.38 was made by the plaintiff to the First National Bank of Eugene, Oregon, was the regular form of contract used by the Ford Motor Company in the years 1915 and 1916 in the creation of limited agencies for the sale of its automobiles, and is the same contract, the validity of which was determined by the Circuit Court of Appeals for the [28] Ninth Circuit in the case of Ford Motor Company vs. Benjamin E. Boone et al.

ALVA W. JONES.

Subscribed and sworn to before me this 25th day of February, 1918.

[Seal] C. G. BUCKINGHAM,
Notary Public for Oregon.

My commission expires 6/23/20.

[Endorsed]: Filed Feb. 25, 1918. G. H. Marsh. [29]

AND AFTERWARDS, to wit, on Monday, the 25th day of February 1918, the same being the 96th judicial day of the regular November term of said court,—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [30]

**Return on Service of Writ.**

United States of America,
District of Oregon,—ss.

I hereby certify and return that I served the annexed order to show cause on the thereinnamed V. W. Winchell and F. M. Hathaway by handing to and leaving a true and correct copy thereof with V. W. Winchell and F. M. Hathaway personally at Eugene in said district on the 26th day of February, 1919, A. D. 191—.

G. F. ALEXANDER,
U. S. Marshal,
By R. D. CARTER,
Deputy. [31]

*In the District Court of the United States for the District of Oregon.*

No. 7768.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Order to Show Cause.**

Now, at this time this cause came on to be heard on motion of the plaintiff above named for an order to show cause requiring the defendants above named, and each of them, to appear before this Court on a day certain, and show cause, if any, why they should not be restrained during the pendency of this suit from levying execution on the property of the plaintiff above named, upon a judgment of this court entered upon the 11th day of September, 1916, in favor of the defendants and against the plaintiff, which judgment is recorded in Book 27, page 139 of the Journal Records of this court, and for a temporary restraining order restraining said defendants from so levying said execution during the pendency of a hearing on such order to show cause, and

IT APPEARING TO THE COURT upon the motion of the plaintiff, and from the affidavit submitted

in support thereof that this is a proper cause in which to issue such an order. [32]

IT IS HEREBY CONSIDERED AND ORDERED that the defendants above named and each of them, appear before this Court on the 4th day of March, 1918, at 10 A. M., and show cause, if any, why an injunction should not be issued restraining them, during the pendency of this suit, from issuing execution against the property of the plaintiff above named on that certain judgment entered by this Court in favor of the defendants and against the plaintiff on the 11th day of September, 1916, which judgment is recorded in Book 27, page 139 of the Journal Records of this court, and

IT IS FURTHER ORDERED, that said defendants and each of them, be, and they are hereby, restrained from issuing execution against the property of the plaintiff upon said judgment, pending further order of this Court.

Dated this 25th day of Feb., 1918.

R. S. BEAN,
Judge.

[Endorsed]: Filed Feb. 25, 1918. G. H. Marsh. [33]

AND AFTERWARDS, to wit, on the 16th day of March, 1919, there was duly filed in said court, an answer, in words and figures as follows, to wit: [34]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Answer.**

Come now the defendants and for their answer to the Bill of Complaint of the Ford Motor Company, a corporation, plaintiff, filed against these defendants, and now and at all times hereinafter saving and reserving to these defendants all manner of benefit and advantage which can or may be had or taken to the many errors, uncertainties and insufficiencies in said bill of complaint contained, for their answer thereto say:

These defendants and each of them answering said complaint says, admits, denies and alleges as follows, to wit:

I.

Admits that during all the time in the Bill of Complaint mentioned the plaintiff was, and still is a corporation incorporated, organized, and existing under

and by virtue of the laws of the State of Michigan, with its factory and place of business at Highland Park, Michigan, and has conformed to the laws of the State of Oregon, authorizing foreign corporations to do business within the State of Oregon, and is a citizen and resident of the State of Michigan. [35]

II.

Admits that during all the time in the bill of complaint mentioned, the defendants, V. W. Winchell and F. M. Hathaway, were copartners, doing business under the firm name and style of "Eugene Ford Auto Company" in the city of Eugene, State of Oregon, and were and still are, citizens of the State of Oregon.

III.

Denies that on or about the 10th day of September, 1915, or at all the plaintiff and defendants entered into a contract known as a "Limited Agency Contract" wherein or whereby the plaintiff appointed the defendants as its limited agents within certain territory in the State of Oregon, for the purpose of negotiating sales of Ford automobiles to users only, which said contract further provided that the same should remain in force or govern all transactions between the parties until July 31, 1916, upon the condition, however, that either party might be at liberty to terminate said contract upon written notice by registered mail at any time with or without notice. Admits that the plaintiff and defendants did enter into a contract, a copy of which is attached to

plaintiff's bill of complaint, marked Exhibit "A" and therein referred to.

IV.

Denies that on or about the 25th day of May, 1916, or at all, the plaintiff, acting under or in accordance with the provisions of said or any contract of agency terminated said agency contract by letter, duly registered or forwarded to the defendants, through the mails of the United States, or was ready, able, or willing to perform all or any of the conditions of [36] said alleged cancellation as in said alleged contract required.

V.

Deny that at the time of said alleged cancellation of said alleged contract these defendants had in their possession *thirty* (36) touring cars or any touring cars and one Sedan, which had been consigned to these defendants under or in accordance with the provisions or upon the conditions, set forth in said alleged agency contract.

VI.

Admits that on or about the 22d day of April, 1916, and on or about the 1st day of May, 1916, and on or about the 24th day of May, 1916, respectively, the defendants borrowed from the First National Bank of Eugene, Oregon, the sum of Fourteen Thousand ($14,000.00) Dollars, but denies that said sum was borrowed prior to any alleged cancellation of said alleged contract. These defendants deny that said sum was procured in any way except as a loan to them upon their credit and property in the usual course of business. Admits that said loan was evi-

denced by their promissory notes, bearing date the 22d day of April, 1916, the 1st day of May, 1916, and the 24th day of May, 1916, respectively, and that each of which sum was secured by a chattel mortgage upon thirty-six (36) Ford cars and one Sedan car, but denies that said cars or any of them or said Sedan belonged to the plaintiff and denies that plaintiff had any right, title or interest in said automobiles, but avers that the same belonged to and were the property of defendants. Denies that said sums of money or any part thereof were in form so procured from the First National Bank of Eugene, Oregon, or procured in any form other than as a *bona fide* borrower upon property owned by defendants in the usual course of business. Denies that in truth or in fact the defendants, in obtaining [37] said sums of money or in executing or delivering said notes on said chattel mortgage to secure the payment of the same, were acting as the agents of the plaintiff under or in accordance with the provisions of said alleged contract referred to in paragraph III of the bill of complaint of any contract at all. Denies that defendants, after procuring said sums of money as the agents of the plaintiff or at all in any fiduciary, contractual or representation capacity with reference to the plaintiff, converted the same or any part thereof to their own use or benefit.

VII.

Admits that on or about the —— day of ——, the plaintiff paid to the said First National Bank of Eugene, Oregon, the sum of $12,676.38, and admits that the lien created by said chattel mortgage as de-

fendant's property was at said time released by said voluntary payment and admits that said last above named sum was the amount due on the three notes given by defendants to said bank. Denies that plaintiff procured from said bank a release of the lien created by defendants, its agents, upon said or any automobiles in manner set forth in paragraph VI of the bill of complaint or in any manner. Denies that plaintiff made such payments or any payment to said First National Bank of Eugene, Oregon, of said sum of $12,673.38 *of* any sum, because the defendants had refused to make such payment or by such payment release said or any automobile from the lien or any lien so created therein by the defendants. Denies that defendants as the agents of plaintiff have received or still have in their possession the sum of $12,676.38 or any part thereof so received from said First National Bank of Eugene, Oregon. Admit that defendants have refused and still refuse to pay plaintiff, with or without demand, a sum of $12,676.38 or any part thereof. Denies that plaintiff has paid said or any sum of money procured or borrowed from said bank by the [38] defendants or either of them as agents of the plaintiff. Denies that plaintiff has secured from said bank a release of the or any lien imposed upon said or any automobiles which were owned by plaintiff at the time when said chattel lien was imposed thereon by the defendants as the agents of the plaintiff and denies that any payment was made by plaintiff to said First National Bank of Eugene with reference to said $12,676.38, except as a voluntary payment. Denies that defend-

ants or either of them have received the sum of $12,676.38 or a double payment of said amount on said notes. Denies that defendants have been doubly paid. Denies that defendants or either of them have received the possession of the sum of $12,676.38, which in equity or good conscience belongs to the plaintiff, or that the amount of money so paid by plaintiff to said bank as in paragraph III*I* of the complaint set forth, constituted a portion of the amount of money to which the defendants were entitled under or by virtue of the terms of the agreement referred to in paragraph III of the complaint or any agreement by way of tender upon the cancellation of said or any contract by the plaintiff as in paragraph IV of the complaint alleged. Denies that plaintiff has made an offer in writing or at all to pay to defendants the particular or any sums of money to which the defendants are entitled by reason of the cancellation by plaintiffs of the contract set forth in paragraph III of the complaint or any contract except that plaintiff has attempted to claim a setoff against a judgment obtained by defendant against plaintiff in a cause in this court where plaintiff herein was plaintiff therein and defendants herein were defendants therein, a certain voluntary payment of $12,676.38 made by plaintiffs to the First National Bank of Eugene, Oregon, which claim setoff was refused and denied by this Court. Admits that defendants have at all times refused to accept the offer of setoff claimed by plaintiff. Denies that plaintiff has made any offer in writing to pay the particular sums of money to which [39] defendants are en-

titled by reason of any contract heretofore or at any time existing between plaintiff and defendant or by reason of the cancellation thereof, which offer the defendants have at all times or at any time, refused to accept or which offer the plaintiff has at all times or at any time been ready or willing to carry out except in an attempt to offset the judgment as aforesaid.

VIII.

Denies that the defendants, or either of them, are at the present time or at all, insolvent or have no means whereby to satisfy the payment of said sum of money or any portion thereof so claimed to be due or owing from the defendants to the plaintiff. Defendants and each of them aver that they are now and at all times in the Bill of Complaint mentioned were solvent.

IX.

Admits that on or about the 11th day of September, 1916, the defendants obtained a judgment in the District Court of the United States for the District of Oregon, against the plaintiff in the sum of $22,146.05, and that said defendants are about to obtain execution upon said judgment, and levy the same upon the property of the plaintiff. Denies that if said defendants are allowed to proceed with said levy, the plaintiff will be deprived of any lawful method of obtaining the payment from the defendants of the sum of $12,676.38 to the plaintiffs' great or irreparable damage. Denies that plaintiff has at all times since any prior time been ready, or willing to pay to the defendants the amount of said judgment or any part thereof and denies that plaintiff has at any

time been ready or willing to pay to the defendants the amount of said judgment, less the sum of $12,-676.38 except as an attempted offset against said judgment. [40]

X.

Admits that this is a controversy between citizens of different States and that it involves more than $3,000.00 exclusive of costs.

XI.

Denies that plaintiff has no plain, speedy or adequate remedy at law but only in equity.

XII.

These defendants and each of them deny each and every other allegation contained in each of the paragraphs of said complaint, except as hereinbefore expressly admitted, and except as hereinafter alleged.

Further answering the said bill of complaint, and for a further and separate answer thereto, these defendants allege:

I.

That on the 10th day of September, 1915, and for some time prior thereto these defendants were engaged in business at Eugene, Oregon, as copartners in carrying on an automobile business and garage business, and automobile repair shop, and in selling automobile accessories, oils, gasoline, tires and other articles used in connection with automobiles and the repairs thereof; and were then doing business under the name and style of Eugene Ford Auto Company as copartners. [41]

II.

That on or about the 10th day of September, 1915,

these defendants signed a contract with the plaintiff, and a copy of which is attached to the said complaint as Exhibit "A," and by this reference is made an integral part of this answer.

That on or about the 25th day of May, 1915, the plaintiff sent a notice to these plaintiffs wherein and whereby the plaintiff claimed the right to cancel the said contract, and without complying with any of the provisions of said contract with reference to the cancellation of the same; and this plaintiff did not in fact comply with the provisions of said contract with reference to the cancellation of the same.

III.

That on the 22d day of April, 1916, and for more than a year prior thereto, and ever since that time these defendants did their banking business with the First National Bank of Eugene, Oregon; and at all of said times had a credit with said bank, so that they were able to and did borrow large sums of money from said bank on their individual credit from time to time when they required the use of cash in their said business, and were accustomed to and did borrow money from the said bank on their individual credit; and on the 22d day of April, 1916, the said First National Bank of Eugene, Oregon, held the promissory notes of these defendants executed by these defendants as individuals for the aggregate amount of Fourteen Thousand Dollars ($14,000.00); and which said notes were as follows: One note being executed by V. W. Winchell and F. M. Hathaway as payors in favor of the First National Bank of Eugene, Oregon, as payee, bearing date the 22d day

of April, 1916, and being for the principal sum of Twenty-eight Hundred Dollars [42] ($2,800.00), bearing interest at the rate of eight per cent (8%) per annum, and on which these defendants had paid on the 29th day of May, 1916, the sum of Three Hundred and Fifty Dollars ($350.00); and one note for the principal sum of Twenty-eight Hundred Dollars ($2,800.00) being dated the 1st day of May, 1916, and being executed by V. W. Winchell and F. M. Hathaway as payors in favor of the First National Bank of Eugene, Oregon, as payee, and on which the said V. W. Winchell and F. M. Hathaway paid on the 5th day of May, 1916, Three Hundred and Fifty Dollars ($350.00) and on the 12th day of May, 1916, the further sum of Three Hundred and Fifty Dollars, and on the 24th day of May, 1916, the further sum of Three Hundred and Fifty Dollars ($350.00); one note being dated May 24, 1916, for the principal sum of Eight Thousand Four Hundred Dollars ($8,400.00), and bearing interest at the rate of eight per cent (8%) per annum and which was executed and delivered by the said V. W. Winchell and F. M. Hathaway as payors in favor of the First National Bank of Eugene, Oregon, as payees.

That the said notes were given said bank in the ordinary course of business from these defendants and represented moneys loaned these defendants by said bank upon the individual credit of these defendants, and not otherwise.

IV.

That on or about the 27th day of May, 1916, in order to secure said note of Eight Thousand Four

Hundred Dollars ($8,400), these defendants made, executed and delivered to said bank a chattel mortgage covering twenty-four (24) touring cars; and on or about the 2d day of June, 1916, these defendants in order to secure to said bank the payment of each of said promissory notes for Twenty-eight Hundred Dollars ($2,800.00) hereinbefore described, made, executed and delivered to said bank two separate chattel mortgages each of which covered eight (8) automobiles.

That at the time these defendants made the said three chattel mortgages to said bank, these defendants were the owners of [43] said automobiles and said automobiles were fully paid for by these defendants.

V.

That this plaintiff on or about the 27th day of May, 1916, commenced an action at law in the United States District Court for the District of Oregon against these defendants wherein the plaintiff in said action, and being the plaintiff in this suit, claimed to be the owner and entitled to the exclusive and immediate possession of certain automobiles; and the said action so commenced was an action of replevin, and the plaintiff herein and therein caused a writ of replevin to be issued out of said court in said action and placed the same in the hands of the United States Marshal for the District of Oregon, and caused the said United States Marshal by virtue of said writ of replevin to seize the said automobiles and take possession of the same under and by virtue of the said writ of replevin, and deliver the same

to the plaintiff herein and therein; and a copy of the complaint upon which said action was tried is hereinafter set forth, is attached hereto and marked Exhibit "A" and made a part hereof. And to the said complaint in said action these defendants filed their answer, a copy of which answer is attached hereto and marked Exhibit "B," and by this reference made a part hereof; and said answer was thereafter amended by adding allegations showing the diversity of citizenship of said parties to said cause. And to the said answer the plaintiff herein and therein on the 28th day of July, 1916, filed its reply denying the allegations of said answer; and a copy of which reply is attached hereto and marked Exhibit "C," and by this reference made a part hereof. [44]

VI.

And issue being joined in said action as aforesaid, a trial was had during the month of September, 1916, of said action in the said District Court of the United States for the District of Oregon; and as a result of said trial a judgment was duly rendered in said action against the plaintiff and in favor of these defendants on the 11th day of September, 1916; and said judgment after giving the title of said cause was and is as follows, to wit:

"Thereupon, on motion of said defendants for judgment on the verdict heretofore filed and entered herein,

IT IS CONSIDERED that said defendants V. W. Winchell and F. M. Hathaway, copartners doing business as the Eugene Ford Auto Company, do have

and recover of and from the plaintiff, Ford Motor Car Company, a corporation, the immediate possession and return of the Ford automobiles described in the complaint and answer herein, and being the following numbered Ford automobiles, to wit: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062282, 1116461, 106,7484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066345, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067415, Sedan 658934, 1116486.

AND IT IS FURTHER ORDERED that in case return of said automobiles cannot be had that said defendants, V. W. Winchell and F. M. Hathaway, co-partners, doing business as the Eugene Ford Auto Company, do have and recover of and from the said plaintiff Ford Motor Car Company, a corporation, the sum of $16,077.50, the value of the said automobiles, and

IT IS FURTHER CONSIDERED that said defendants, V. W. Winchell and F. M. Hathaway, co-partners, doing business as [45] the Eugene Ford Auto Company, have and recover of and from the said plaintiff, Ford Motor Car Company, a corporation, damages in the sum of $6,000.00, together with costs and disbursements herein taxed at $68.55.

Whereupon, on motion of said plaintiff, IT IS ORDERED that it be and it is hereby allowed thirty days from this date within which to file a motion to set aside said judgment and for a new trial herein, and in which to submit a bill of exceptions, and

IT IS FURTHER ORDERED that issuance of execution upon the said judgment be stayed until after the termination of the said motion for new trial.

R. S. BEAN,
United States District Judge.

Filed September 11, 1916. G. H. Marsh, Clerk."

VII.

That in said action the plaintiff herein, and being the plaintiff therein, offered in evidence the said promissory notes hereinbefore mentioned and described, and being the promissory notes referred to and described in the complaint herein, which had been given by these defendants to the said First National Bank of Eugene, Oregon, and the said notes were received in evidence with evidence claiming to show that the plaintiff herein and therein had voluntarily paid the amount then due on said promissory notes amounting to $12,676.38 to the said bank; and in said action, the plaintiff herein and therein claimed that the amount so paid the bank, to wit, the amount then due on said notes, should be offset against the defenses and counterclaims pleaded by these defendants in their said answer in said action; and in said action these defendants offered evidence and such evidence was received to the effect that these defendants were the owners of the said automobiles described in the pleadings in said cause, and which are the same automobiles described in the complaint in this suit and in the pleadings herein. [46]

And in said action these defendants were given judgment against the plaintiff for the value of said automobiles, to wit, the sum of Sixteen Thousand

Seventy-seven Dollars and 50 Cents ($16,077.50), and which was the amount these defendants had paid the plaintiff herein and therein for the said automobiles, and as adjudicated and determined in said action, together with the further sum of Six Thousand Dollars ($6000.00) damages sustained by these defendants on account of the wrongful taking of the said automobiles by the plaintiff therein and herein under the said writ of replevin; and in said action it was adjudicated and determined that the plaintiff in this suit had voluntarily paid to the said First National Bank of Eugene, Oregon, without the knowledge or request of these defendants, the said sum of Twelve Thousand Six Hundred Seventy-six and 38/100 dollars ($12,676.38), and that said payment was made voluntarily and was a voluntary payment on the part of the plaintiff herein and therein to said bank; and it was adjudicated and determined in said action that the plaintiff therein and herein was not entitled to set off said sum against the defenses and counterclaims pleaded in the defendants' answer in said action; and it was adjudicated and determined that these defendants were the owners of and had the exclusive right to the possession of the said automobiles and to the return thereof, and that in case a return of said automobiles could not be had that these defendants should have and recover of and from the plaintiff therein and herein the said sum of Sixteen Thousand Seventy-seven and 50/100 Dollars ($16,077.50), the value of said automobiles.

VIII.

That after said judgment was rendered, as afore-

said, and to wit, on or about the 8th day of November, 1916, the plaintiff therein and herein filed a petition for a new trial or modification of said judgment in the District Court of the United States for the District of Oregon in said action, and a [47] copy of which petition is attached hereto, marked Exhibit "D" for reference and made a part hereof, as though the same were fully set forth herein.

That in said motion aforesaid, the plaintiff in said action, and being the plaintiff herein, moved the District Court of the United States for the District of Oregon, to offset against the said judgment and particularly against the sum of $16,077.50 awarded these defendants, as aforesaid, the said sum of Twelve Thousand Six Hundred Seventy-six and 38/100 Dollars ($12,676.38) and being the amount of money claimed to have been paid by the plaintiff herein and therein to the First National Bank of Eugene, Oregon, in payment and discharge of the notes described in this bill of complaint herein, and given to the First National Bank of Eugene, Oregon, by these defendants. And the said motion came on regularly to be heard in said action in the District Court of the United States for the District of Oregon, and said Court on or about the 2d day of January, 1917, duly made and entered an order in said action denying the said motion, and thereby and in the proceedings in said action prior thereto, as aforesaid, it was fully determined, adjudicated, and adjudged by the said District Court of the United States for the District of Oregon in said action wherein the plaintiff herein was the plaintiff therein, and the defendants herein

were the defendants therein, that this plaintiff was not entitled to offset the said sum of $12,676.38 or any part thereof against the defenses and counterclaims of these defendants in said action and against the said judgment rendered in said District Court of the United States for the District of Oregon in favor of these defendants and against this plaintiff, and which is the judgment referred to in said bill of complaint of the plaintiff herein in Paragraph IX thereof filed herein against these defendants, and which said judgment and which said order denying the modification thereof was not appealed from and is in full force and effect and is a final [48] judgment and order of said District Court of the United States for the District of Oregon.

IX.

Defendants further answering allege that the plaintiff in this suit, being the plaintiff in said action of replevin hereinbefore described, prosecuted a writ of error from the District Court of the United States for the District of Oregon in said action to the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit of the United States, and said appeal was duly heard and determined by said United States Circuit Court of Appeals, and the judgment of said Circuit Court of Appeals was duly rendered affirming the said judgment of this Court, the District Court of the United States for the District of Oregon; and the opinion of the said Circuit Court of Appeals in said action was duly filed in said Court on the 1st day of October, 1917; and in the said opinion the said Circuit Court of Appeals and upon

the record presented by said writ of error prosecuted by the plaintiff in said action, and upon said appeal, determined and decided that the allegation in paragraph 4 of this bill of complaint to the effect that the plaintiff in this suit was ready and willing to perform all the conditions of the alleged cancellation of the said contract mentioned in Paragraph IV was not true, and in said action, of replevin it was claimed by this plaintiff that it had duly and lawfully canceled the contract pleaded in said bill of complaint herein as Exhibit "A," and evidence was offered and received by the parties to said action of replevin, as aforesaid, on the issues tendered therein with respect to the alleged cancellation of the contract referred to as Exhibit "A" in the bill of complaint herein; and upon said evidence it was duly adjudged and determined in said action that the plaintiff therein and herein had not complied ]49] with the provisions of said contract with respect to the requirements therein contained by virtue of which it claimed it was entitled to cancel the said contract and the said matter was fully adjudicated, determined, and adjudged in said action, as shown by the opinion and judgment of the said Circuit Court of Appeals in said action, and which said opinion is reported in the Federal Reporter in Vol. 245 thereof at page 85; and thereafter the said Circuit Court of Appeals duly and regularly issued its Mandate in said action, which said Mandate has been duly entered of record in the District Court of the United States for the District of Oregon, and the judgment thereon is of record in this said court; the District

Court of the United States for the District of Oregon, and is in full force and effect; and this suit is attempted to be and is brought against the issuance of an execution on said judgment and by reason of the foregoing matters alleged, as aforesaid, with respect to said adjudications, these defendants plead by reason of the premises, as hereinbefore set forth, that all of the matters and things pleaded in the said bill of complaint in this suit, and on account of which this cause of suit is brought, are *res adjudicata,* and were fully litigated, tried, determined, and adjudged in the District Court of the United States for the District of Oregon; and on the writ of error from this Court, and in said action, as aforesaid, and in a cause wherein the said courts had jurisdiction of the subject matter hereinbefore referred to, and of the parties to said cause and of said cause.

X.

That these defendants further answering allege that they are now and were at the time this suit was commenced, and for a long time prior thereto, copartners engaged in the automobile and garage business at Eugene, Oregon, and were so engaged in said business at Eugene, Oregon, for about a year prior to the commencement of this suit; and at the time of the commencement of this suit had duly and regularly filed their assumed business name as copartners according [50] to the laws of the State of Oregon in such case made and provided, and which assumed business name is the Pacific Auto Company; and these defendants during all of said times were and now are carrying on said business as a going

concern and were and are individually and as individuals and as copartners entirely solvent and said copartnership was and is entirely solvent, as aforesaid, at the time of the commencement of this suit, and for a long time prior thereto and now; and plaintiff knew such to be the facts at the time the plaintiff commenced this suit and knew that these defendants were and are solvent, as aforesaid.

XI.

And these defendants not confessing or admitting that any matter, cause, or thing in the said bill contained and not hereby sufficiently answered is true, deny that the plaintiff and complainant is entitled to any relief against them by reason of any matter in the said bill contained, and prays to be hence dismissed with their costs in this behalf sustained.

CHARLES A. HARDY,
LOGAN & SMITH,
Attorneys for Defendants.

United States of America,
State of Oregon,
County of Lane,—ss.

I, V. W. Winchell, being first duly sworn, on oath depose and say: That I am one of the defendants in the above-entitled suit, and that the foregoing answer to the bill of complaint herein is true, as I verily believe.

V. W. WINCHELL.

Subscribed and sworn to before me this 13th day of March, 1918.

[Seal] CHARLES A. HARDY,
Notary Public for Oregon.

My commission expires March 19, 1921. [51]

**Exhibit "A" to Answer.**

(Omitting Title.)

AMENDED COMPLAINT.

Plaintiff complains and for cause of action alleges:

I.

That it is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Michigan, with its factory and principal place of business at Highland Park, Michigan, and duly authorized to transact business as a foreign corporation in the State of Oregon, with a factory branch and principal place of business in the State of Oregon in Portland, Multnomah County, Oregon.

II.

That E. A. Farrington and L. A. Houck are copartners doing business under the firm name and style of Pacific Transfer Company, and are engaged in the warehouse and transfer business in the city of Eugene, Oregon.

III.

That H. Sandgathe is an individual doing business as the Springfield Garage, and is in the automobile business at Springfield, Oregon.

IV.

That V. W. Winchell and F. M. Hathaway are copartners doing business as the Eugene Ford Auto

Company, and are in the automobile business at Eugene, Oregon.

V.

That A. Wilhelm and John Doe Wilhelm are copartners doing business as A. Wilhelm & Son, and are in the automobile business at Junction City, Oregon.

VI.

That heretofore and on or about September 10th, 1915, plaintiff and defendants V. W. Winchell and F. M. Hathaway entered into a contract whereby said defendants were to represent [52] the plaintiff as limited agents. Pursuant to said contract plaintiff consigned to the said defendants in this paragraph mentioned the following numbered Ford automobiles: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062282, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066343, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067615, Sedan 658934, 1116486.

VII.

That thereafter, plaintiff pursuant to the terms of said contract with the defendants mentioned in the last preceding paragraph, duly canceled said contract and offered $16,077.50, the money advanced on said consignment of automobiles by the above-mentioned defendants to said defendants in payment and satisfaction as provided for in said contract; and that defendants then refused and ever since have refused to receive the same; that the plaintiff was at the time

of said tender ready and willing and able to pay said amount thereof to the defendants, and that since said offer plaintiff has been ready, willing, and able to pay the sum of thirty-four hundred and one and 12/100 dollars ($3401.12), which amount is the defendants' Winchell and Hathaway, property in said cars at this time, and that plaintiff now brings said sum of thirty-four hundred and one and 12/100 dollars into this court in this action, ready to be paid to defendants.

VIII.

That the amount involved in this action is in excess of three thousand dollars, and within the jurisdiction of this court.

IX.

That at the time of the commencement of this action said automobiles above described are within the State of Oregon and the jurisdiction of this Court, and in the possession of the [53] defendants herein; and that the plaintiff is the present owner and entitled to the immediate possession of said automobiles; that demand has been made upon the defendants for the possession of said automobiles and defendants have refused to give plaintiff possession of said automobiles.

X.

That said automobiles are of the value of Sixteen Thousand Seventy-seven and 50-100 Dollars ($16,077.50).

Wherefore plaintiff demands judgment against the defendants for the recovery of Ford automobiles as particularly set forth in Paragraph VI of this com-

plaint, or for $16,077.50, the value thereof; $1,000.00 damages for the detention thereof; and for the costs and disbursements of this action.

E. L. McDOUGAL,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, E. L. McDougal, being first duly sworn, depose and say that I am the plaintiff's attorney in the above-entitled action, and that the foregoing proposed amended answer is true, as I verily believe; that I make this verification because the attorney in fact is without the State, and I am acquainted with the facts.

(Sgd.) E. L. McDOUGAL.

Subscribed and sworn to before me this 14th day of August, 1916.

(Sgd.) HOMER T. SHAVER,
Notary Public for Oregon.

My commission expires July 19, 1920.

Filed August 14, 1916. G. H. Marsh. Clerk. [54]

**Exhibit "B" to Answer.**

(Omitting Title.)

ANSWER.

Come now the defendants and answering the complaint herein admit the allegations contained in Paragraph I, in Paragraph II, in Paragraph III, in Paragraph IV, and in Paragraph V of the Complaint herein.

Deny each and every other allegation contained in said complaint except as hereinafter expressly ad-

mitted, and except as hereinafter alleged.

For a further and separate answer and defense to said complaint these defendants allege that V. W. Winchell and F. M. Hathaway prior to the time of the commencement of this action had purchased all the Ford automobiles described in said complaint, and had paid the plaintiff the full purchase price required to be paid from them to plaintiff, and no further payments were to be made thereon; and, thereupon, the plaintiff delivered said automobiles to defendants and title to the same passed from plaintiff to defendants, and defendants became the owners thereof, and prior to the time of the commencement of this action, and at the time of the commencement thereof were, and are now, the owners thereof, and entitled to the immediate and exclusive possession of the said automobiles.

For a further and separate answer and defense to said complaint, the defendants V. W. Winchell and F. M. Hathaway, reallege all of the allegations contained in the first answer contained herein, and these defendants further allege that ever since the contract mentioned in the complaint was made between plaintiff and these defendants, plaintiff has dealt with these defendants in the sale of automobiles, so that when the defendants paid to plaintiff the amount required to take up the bill of lading sent for collection by the plaintiff with the automobiles delivered by plaintiff to defendants, and paid the [55] freight and draft attached to such bill of lading, delivery was made of said automobiles to defendants and such drafts were drawn by plaintiff against defendants for

the full sum required to be paid by defendants to plaintiff as the purchase price of said automobiles, and upon such payment and delivery plaintiffs have received said automobiles and dealt with the same as their own, with the knowledge and acquiescence of plaintiff; and the contract between plaintiff and defendants ever since the same was made has been construed by the parties, the same being the contract under which plaintiff sold and defendants purchased the said automobiles, so that upon payment of such sight drafts and the delivery of the automobiles upon the payment of the same and the freight, title and delivery to such automobiles was completed and passed from plaintiff to defendants and that all of the automobiles mentioned in the complaint were purchased from plaintiff and paid for by defendants upon the terms hereinafter set forth; and long prior to the institution of this action, and not otherwise; and that at the time of the commencement of this action and for a long time prior thereto defendants were and are the exclusive owners of said automobiles and each one of the same and entitled to the immediate and exclusive possession thereof, and were in the lawful possession thereof at the time of the commencement of this action.

For a third further and separate answer and defense these defendants allege the truth to be; That prior to the commencement of this action and on or about the 29th day of May, 1916, the plaintiff and the defendants V. W. Winchell and F. M. Hathaway had a settlement of the contract existing between plaintiff and defendants wherein and whereby the

plaintiff and defendants adjusted their mutual accounts and reciprocal claims, and wherein and whereby the plaintiff agreed that the defendants were the owners of and did convey to defendants V. W. Winchell and F. M. Hathaway all claims of title on the part of plaintiff to the automobiles described in the complaint and each and [56] every one thereof, and relinquished every claim of possession to the said automobiles and each and every one thereof.

For a fourth further and separate answer and defense and counterclaim the defendants V. W. Winchell and F. M. Hathaway allege that during all of the times mentioned herein they were, and now are, copartners doing business under the firm name and style of Eugene Ford Auto Company, and had duly registered their assumed business name with the County Clerk of Lane County, Oregon, and were engaged in a general automobile business in Lane County, Oregon, and engaged in buying and selling Ford Automobiles, parts, fixtures, accessories, supplies and materials used in said business and incident thereto.

That at the time of the commencement of this action these defendants were, and are now, the owners of the Ford automobiles mentioned in the complaint and being automobiles numbered and specifically designated in Paragraph VI of the complaint, and being Ford automobiles: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062232, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066345, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377,

1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067415, Sedan 658934, 1116486.

That said automobiles were and are of the value of $493.25 for each of said cars, except for the Sedan which was and is of the value of $798.25.

That the defendants at the time of the commencement of this action, as such owners of said automobiles, were entitled to the immediate and exclusive possession of the same; and on or about Monday, the 5th day of June, 1916, the plaintiff instituted the above cause and wrongfully and unlawfully and maliciously caused the writ of replevin to be issued out of this Court and filed an affidavit and bond thereon and demanded the immediate possession of the said automobiles; and at the said time the plaintiff well knew that said automobiles and each and every one thereof, were the exclusive property of these answering [57] defendants, V. W. Winchell and F. M. Hathaway; and that said defendants were entitled to the immediate and exclusive possession thereof, and plaintiff caused said writ of replevin to be issued herein and the said automobiles to be seized maliciously, wrongfully and unlawfully for the purpose of destroying the business of these defendants and injuring their financial standing and credit and depriving them of said property of the value of $18,555.25 as aforesaid, and to drive them out of business and to prevent them from conducting their automobile and garage business hereinbefore described.

That at said time these defendants had an established business in dealing in automobiles, accessories,

appurtenances and supplies from which they were then making and had been making for several months last past a regular profit of approximately Three Hundred Dollars per month.

That by the wrongful acts of the plaintiff, as herein alleged the business of these defendants has been destroyed, their business credit ruined, their standing in the mercantile world has been discredited and they have been injured and damaged by the malicious acts of defendants, as alleged, to the sum of Twenty Five Thousand Dollars, in addition to the general damages hereinbefore set forth, to wit; value of the automobiles and the property aggregating $18,555.25.

That the plaintiff is a corporation of great wealth and extensive business associations and power in the commercial world, and in committing the acts herein set forth, it has used its wealth, standing and power to harass and annoy these defendants by the issuance of legal process to which plaintiff knew its was not entitled.

WHEREFORE, defendants demand judgment that the defendants V. W. Winchell and F. M. Hathaway have judgment against the plaintiff for the recovery of the Ford automobiles, as particularly set forth in the answer herein, or for $18,555.25, the value thereof; and for Twenty-five Thousand Dollars damages; and for their costs and disbursements [58] in this action.

I. N. SMITH,
L. BILYEU and
THOMPSON & HARDY,
Attorneys for Defendants.

State of Oregon,
County of Lane,—ss.

I, V. W. Winchell, being first duly sworn, depose and say that I am one of the defendants in the above-entitled action; and that the foregoing answer is true as I verily believe.

V. W. WINCHELL.

Subscribed and sworn to before me this 13th day of June, 1916.

[Notarial Seal] HELMUS W. THOMPSON,
Notary Public for the State of Oregon.

My commission expires March 27, 1917.

Filed June 14, 1916. G. H. Marsh, Clerk. [59]

**Exhibit "C" to Answer.**

(Omitting Title.)

REPLY.

Comes now the plaintiff, Ford Motor Company, a corporation, and for reply to the first further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained, which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff replying to the second further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff replying to the third further and separate answer and defense of the defendants denies the same, and the whole thereof, except as to

the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff, replying to the fourth further and separate answer and defense of the defendants denies the same, and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

WHEREFORE, plaintiff having fully replied to the further and separate answers and defenses of the defendants, prays judgment as heretofore asked for in the complaint on file herein.

E. L. McDOUGAL,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, E. L. McDougal, being first duly sworn, depose and say that I am the attorney for plaintiff corporation in the above-entitled action and that the foregoing reply is true, as I verily believe. I further state that I have personal knowledge of the facts herein contained and verify this reply for the reason that the proper officer for service of this corporation is not now within the State.

(Sgd.) E. L. McDOUGAL.

Subscribed and sworn to before me this 28th day of July, 1916.

(Sgd.) F. C. McDOUGAL,
Notary Public for Oregon.

My commission expires July 1, 1920. [60]

**Exhibit "D" to Answer.**

(Omitting Title.)

Comes now the plaintiff in the above-entitled action appearing by Messrs. Platt and Platt and E. L. McDougall, its attorneys of record, and petitions the court for a new trial in the above-entitled action and for grounds of such petition alleges:

I.

That it appears from the undisputed testimony introduced upon the trial of the above-entitled cause that the plaintiff was compelled to and did pay to The First National Bank of Eugene, Oregon, three notes of the defendants, V. W. Winchell and F. M. Hathaway, aggregating the sum of $12,676.38, each of which notes was secured by a chattel mortgage on the automobiles sought to be recovered from the possession of the defendants in the above-entitled action which notes the plaintiff was compelled to pay and did pay in order to free the automobiles in controversy from the liens of the chattel mortgages given to secure said notes, in order to enable it to maintain an action for the replevin of said automobiles, and the Court failed and refused to instruct the jury at the trial of the above-entitled action that the plaintiff was entitled to offset the amounts paid in satisfaction of said notes against any amounts which they might find in favor of the defendants and against the plaintiff.

II.

Plaintiff petitions for a new trial in the above-entitled action upon the further ground that the ver-

dict of the jury made and entered in the above-entitled action, and the judgment entered thereon contravenes the instructions given by the Court upon the trial of the above-entitled cause in that it allows to the defendants as damages profits on the sales of automobiles in addition to the value of the cars therein and thereby expressly fixed at the sum of $16,077.50, and said judgment is contrary to the evidence introduced upon the trial of the above-entitled cause in that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause [61] and the law applicable to the facts proven as evidenced by the instructions of the Court made upon the trial of the above-entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants, V. W. Winchell and F. M. Hathaway, prior to the institution of the above-entitled action, and the defendants are not entitled to any damages arising from the action of the plaintiff in terminating its contract or in asserting its rights to the possession of the automobiles in controversy, and that no evidence was introduced upon the trial of the above-entitled cause upon which any claim for damages for the sum of $6000, or any sum in excess of $2414.75 could properly be based, and said verdict and judgment are contrary to the evidence introduced upon the trial of the above-entitled cause, and that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the defendants, V. W. Winchell and F. M. Hathaway, has sold their business to a third party at or about the time of the cancellation of their con-

tract with the plaintiff in the above-entitled cause and received for such transfer a valuable consideration.

III.

That the verdict rendered against the plaintiff in the above-entitled cause is contrary to and against the weight of evidence introduced upon the trial of the above-entitled cause.

IV.

Plaintiff further petitions the Court for an order modifying the judgment entered in the above-entitled cause on the —— day of September, 1916, by offsetting against the sum of $16,077.50 therein awarded to the defendants in lieu of the machines sought to be replevined in the above-entitled action the sum of $12,676.38, being the amount of money paid by the plaintiff to The First National Bank of Eugene, Oregon, for the benefit of and in payment and discharge of the three notes of the defendants, V. W. Winchell and F. M. Hathaway, given to The First National Bank of Eugene, Oregon, as [62] payee, each of which said notes were secured by a chattel mortgage upon the automobiles sought to be replevined in the above-entitled action, which facts appear from the undisputed evidence introduced upon the trial of the above-entitled cause, and for grounds of such petition alleges that the plaintiff was compelled to and did pay the said notes of the defendants, V. W. Winchell and F. M. Hathaway, the first note being in the sum of $2,800 bearing date April 22d, 1916; the second note being in the sum of $2,800 bearing date of May 1st, 1916, and the third

note being in the sum of $8,400 bearing date May 24th, 1916, each of which notes was secured by a chattel mortgage upon the property sought to be replevined in the above-entitled action, in order to free the property involved in the above-entitled cause from the liens of said mortgages prior to the institution of its action for the replevin of said automobiles.

V.

Plaintiff further petitions for an order of this Court modifying the judgment heretofore entered in the above-entitled cause on the —— day of September, 1916, by striking therefrom the sum of $6,000 allowed to the defendants as damages on account of the alleged erroneous action of the plaintiff in taking possession of the automobiles involved in the above-entitled controversy upon the grounds and for the reason that such is not a proper item of damage, because it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants, V. W. Winchell and F. M. Hathaway, prior to the institution of the above-entitled action, and the defendants are, therefore, not entitled to any damages arising from the action of the plaintiff in asserting its rights to the possession of the automobiles in controversy and its termination of its contract with the defendants, V. W. Winchell and F. M. Hathaway, and that no evidence was issued upon the trial of the above-entitled cause upon which [63] any claim or judgment for damages in the sum of $6,000 could properly be based, and that such allowance of $6,000 for damages, or

any other sum in excess of $2,414.75 is in contravention of the instructions of the Court directing the jury that they should not allow the value of the machines in controversy and at the same time allow any claim for loss of profits arising from an inability to sell said automobiles, and upon the further ground that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the business of the defendants, V. W. Winchell and F. M. Hathaway, had been sold to a third party at or about the time of the cancellation of the said defendant's contract with the plaintiff in the above-entitled action, and said defendants received therefor a valuable consideration.

PLATT & PLATT and
E. L. McDOUGAL,
Attorneys for Plaintiff.

Filed 8th day of November, 1916. G. H. Marsh, Clerk. [64]

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AND AFTERWARDS, to wit, on the 16th day of March, 1918, there was duly filed in said court, an affidavit of Luke L. Goodrich, F. M. Hathaway, V. W. Winchell and P. E. Snodgrass in words and figures as follows, to wit: [67]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Affidavit of Luke L. Goodrich in Support of Motion to Dissolve Restraining Order.**

United States of America,
State of Oregon,
County of Lane,—ss.

I, Luke L. Goodrich, being first duly sworn on oath, depose and say that I am the cashier of the First National Bank of Eugene, Oregon, and was such cashier continuously since the 1st of January, 1916, up to the present time.

That I know the above-named defendants V. W. Winchell and F. M. Hathaway, and have known them ever since the 1st day of January, 1916, and for a long time prior thereto; and during all of said times they have been customers of the First National Bank of Eugene, Oregon. That during all of said times, and for a long time prior thereto, the said Winchell & Hathaway had credit at the said bank and were accustomed to borrow money from said bank from time to time in the course of their said

business; and that on the 22d day of April, 1916, the said First National Bank of Eugene, Oregon, loaned to the said V. W. Winchell and F. M. Hathaway the sum of Twenty-eight Hundred Dollars ($2,800.00) and took their promissory note therefor, and said loan was made to said V. W. Winchell and F. M. Hathaway on their credit as individuals and as copartners and not to the Ford Motor Company, a corporation, and not acting on behalf of the Ford Motor Company, a corporation, and [68] that the said First National Bank of Eugene, Oregon, did not loan any sum of money whatever to the Ford Motor Company, a corporation. That the said Winchell and Hathaway paid Three Hundred and Fifty Dollars on said note on the 29th day of May, 1916. That on the 1st day of May, 1916, said bank loaned said Winchell & Hathaway as aforesaid, and upon their credit as individuals and copartners as aforesaid, the further sum of Twenty-eight Hundred Dollars ($2,800.00) and received their promissory note therefor, and that the said Winchell & Hathaway paid Three Hundred and Fifty Dollars on said note on the 5th day of May, 1916, and the further sum of Three Hundred and Fifty Dollars on the 12th day of May, 1916, and the further sum of Three Hundred and Fifty Dollars on the 24th day of May, 1916, and said money was not loaned to the Ford Motor Company or upon its credit. That on the 24th day of May, 1916, the said Winchell & Hathaway in the ordinary course of business borrowed the sum of Eight Thousand Four Hundred Dollars ($8,400.00) from the said First National Bank of Eugene, Oregon, and

gave their promissory note to said bank for said amount and said sum of money was not loaned to the Ford Motor Company or upon its credit and the said bank has never at any time loaned any money to the Ford Motor Company, a corporation, or loaned money to said corporation upon its credit; and the said Ford Motor Company has never borrowed any money from the said First National Bank of Eugene, Oregon, at any time, and the said V. W. Winchell and F. M. Hathaway for more than a year prior hereto, and at the present time, and now, were and are engaged in the automobile business and garage business at Eugene, Oregon, and as copartners, and under the firm name and style of Pacific Auto Company, and have continuously carried on said business, and have credit at the First National Bank of Eugene, Oregon, and in my opinion during all of the time herein mentioned have been and were and are solvent.

LUKE L. GOODRICH.

Subscribed and sworn to before me this 13th day of March, 1918.

[Seal] CHARLES A. HARDY,
Notary Public for Oregon.

My commission expires March 19, 1921. [69]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Affidavit of F. M. Hathaway, in Support of Motion to Dissolve Restraining Order.**

United States of America,
State of Oregon,
County of Lane,—ss.

I, F. M. Hathaway, being first duly sworn, depose and say: That I am the F. M. Hathaway, one of the defendants in the above-entitled suit; that I have read the answer filed herein and that I was present at the trial of the replevin action mentioned and described in said answer, and that the facts alleged in said answer with reference to the proceedings had in said replevin action are true, and that I know of my own knowledge that the facts set forth in regard to the proceedings in said replevin action are true.

That I have never at any time borrowed any money whatever from the First National Bank of Eugene, Oregon, or any other bank for and on behalf of the Ford Motor Company, the plaintiff above named, or acting as the agent of the Ford Motor Company; and that moneys borrowed by myself from the First

National Bank of Eugene, Oregon, were borrowed from said bank on the credit of myself and the credit of V. W. Winchell, and that the said V. W. Winchell and myself were copartners engaged in business in Eugene, Oregon, at the time of borrowing money from said First National Bank of Eugene, Oregon, and executing promissory notes as evidence thereof to said bank, and have been customers of said bank continuously for more than three years last past, and that myself and the said V. W. Winchell as individuals and copartners have for more than three years last past had credit at said First National Bank of Eugene, Oregon, and been accustomed to borrow money from said bank upon [70] our own credit and not otherwise.

And I further say that all of the facts set forth in said answer are true; and I further say that neither myself nor the said V. W. Winchell have ever at any time converted to our own use any money belonging to the Ford Motor Company either in the sum of Twelve Thousand Six Hundred Seventy-six and 38/100 Dollars, or other sum; and that for more than a year last past I have been continuously engaged in the automobile and garage business at Eugene, Oregon, with V. W. Winchell as a copartner, and carrying on said business as a going concern under the firm name and style of Pacific Auto Company; and that both myself and the said V. W. Winchell as individuals and copartners are entirely solvent, and in our said business are able to and *to* pay our outstanding accounts and expenses in the usual course of business. That there are no judg-

ments, proceedings or attachments against either of us either as individuals or copartners, and that each of us own property in our own individual names and the same *in* unincumbered and at the time of the commencement of this suit we were so engaged in business at Eugene, Oregon, carrying on our said business in the usual course as a solvent, going business, as the plaintiff well knew at the time of the commencement of this suit and the filing of its bill of complaint herein.

F. M. HATHAWAY.

Subscribed and sworn to before me this 13th day of March, 1918.

[Seal] CHARLES A. HARDY,
Notary Public for Oregon.

My commission expires March 19, 1921. [71]

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*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Copartners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Affidavit of V. W. Winchell, in Support of Motion to Dissolve Restraining Order.**

United States of America,
State of Oregon,
County of Lane,—ss.

I, V. W. Winchell, being first duly sworn, depose and say: That I am the V. W. Winchell, one of the defendants in the above-entitled suit; that I have read the answer filed herein and that I was present at the trial of the replevin action mentioned and described in said answer, and that the facts alleged in said answer with reference to the proceedings had in said replevin action are true, and that I know of my own knowledge that the facts set forth in regard to the proceedings in said replevin action are true.

That I have never at any time borrowed any money whatever from the First National Bank of Eugene, Oregon, or any other bank for and on behalf of the Ford Motor Company, the plaintiff above named, or acting as the agent of the Ford Motor Company; and that moneys borrowed by myself from the First National Bank of Eugene, Oregon, were borrowed from said bank on the credit of myself and the credit of F. M. Hathaway, and that the said F. M. Hathaway and myself were copartners engaged in business in Eugene, Oregon, at the time of borrowing money from said First National Bank of Eugene, Oregon, and executing promissory notes as evidence thereof to said bank, and have been customers of said bank continuously for more than three years last past, and that myself and the said F. M. Hathaway as individuals and copartners have for more than three

years last past had credit at said First National Bank of Eugene, Oregon, and had been accustomed to borrow money from said bank upon [72] our own credit and not otherwise.

And I further say that all of the facts set forth in said answer are true; and I further say that neither myself nor the said F. M. Hathaway have ever at any time converted to our own use any money belonging to the Ford Motor Company either in the sum of Twelve Thousand Six Hundred Seventy-six and 38/100 Dollars, or other sum; and that for more than a year last past I have been continuously engaged in the automobile and garage business at Eugene, Oregon, with F. M. Hathaway as a copartner, and carrying on said business as a going concern, under the firm name and style of Pacific Auto Company; and that both myself and the said F. M. Hathaway as individuals and copartners are entirely solvent and in our said business are able to and do pay our outstanding acounts and expenses in the usual course of business. That there are no judgments, proceedings or attachments against either of us either as individuals or copartners, and that each of us own property in our own individual names and the same is unincumbered and at the time of the commencement of this suit we were so engaged in business at Eugene, Oregon, carrying on our said business in the usual course as a solvent, going business, as the plaintiff well knew at the time of the commencement of this suit and the filing of its bill of complaint herein.

V. W. WINCHELL.

Subscribed and sworn to before me this 13th day of March, 1918.

[Seal] CHARLES A. HARDY,
Notary Public for Oregon.

My commission expires March 19, 1921. [73]

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*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Affidavit of P. E. Snodgrass, in Support of Motion to Dissolve Restraining Order.**

United States of America,
State of Oregon,
County of Lane,—ss.

I, P. E. Snodgrass, being first duly sworn, depose and say: That I am the president of the First National Bank of Eugene, Oregon, and that in April and May, 1916, I was the vice-president of said bank and that as vice-president of said bank, I was one of the active executives of said bank and actively engaged in the banking business in said bank and giving my time to carrying on the business of said bank.

That I know the above-named defendants, V. W. Winchell and F. M. Hathawy, and have known them

ever since the first day of January, 1916, and for a long time prior thereof; and during all of said times they have been customers of the First National Bank of Eugene, Oregon. That during all of said times, and for a long time prior thereto, the said Winchell & Hathaway had credit at the said bank and were accustomed to borrow money from said bank from time to time in the course of their said business; and that on the 22d day of April, 1916, the said First National Bank of Eugene, Oregon, loaned to the said V. W. Winchell and F. M. Hathaway the sum of Twenty-eight Hundred Dollars and took their promissory note therefor, and said loan was made to said V. W. Winchell and F. M. Hathaway on their credit as individuals and as copartners and not to the Ford Motor Company, a corporation, and not acting on behalf of the Ford Motor Company, a corporation, and that the said First National Bank of [74] Eugene, Oregon, did not loan any sum of money whatever to the Ford Motor Company, a corporation. That the said Winchell & Hathaway paid Three Hundred and Fifty Dollars ($350.00) on said note on the 29th day of May, 1916. That on the 1st day of May, 1916, said bank loaned said Winchell & Hathaway, as aforesaid, and upon their credit as individuals and copartners, as aforesaid, the further sum of Twenty-eight Hundred Dollars, and received their promissory note therefor and that the said Winchell & Hathaway paid Three Hundred and Fifty Dollars on said note on the 5th day of May, 1916, and the further sum of Three Hundred and Fifty Dollars on the 12th day of May, 1916, and the

further sum of Three Hundred and Fifty Dollars on the 24th day of May, 1916, and said money was not loaned to the Ford Motor Company or upon its credit. That on the 24th day of May, 1916, the said Winchell & Hathaway, in the ordinary course of business borrowed the sum of Eight Thousand Four Hundred Dollars from the said First National Bank of Eugene, Oregon, and gave their promissory note to said bank for said amount, and said sum of money was not loaned to the Ford Motor Company or upon its credit and the said bank never at any time loaned said money or any money, to the Ford Motor Company, a corporation, or loaned money to said corporation upon its credit; and the said Ford Motor Company has never borrowed any money from the said First National Bank of Eugene, Oregon, at any time, and the said V. W. Winchell and F. M. Hathaway for more than a year prior hereto, and at the present time, and now were and are engaged in the automobile and garage business at Eugene, Oregon, and as copartners and under the firm name and style of Pacific Auto Company, and have continuously carried on said business and have credit at the First National Bank of Eugene, Oregon, and in my opinion during all of the time herein mentioned have been and were and are solvent.

P. E. SNODGRASS.

Subscribed and sworn to before me this 13th day of March, 1918.

[Seal] CHARLES A. HARDY,
Notary Public for Oregon.

My commission expires March 19, 1921.

[Endorsed]: Filed March 16, 1918. G. H. Marsh.

Service admitted 15 Mar. 1918.

PLATT & PLATT,
Attorneys for Plaintiff. [75]

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AND AFTERWARDS, to wit, on Monday, the 25th day of March, 1918, the same being the 19th judicial day of the regular March term of said court —Present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proeedings were had in said cause, to wit: [76]

*In the District Court of the United States for the District of Oregon.*

No. 7768.

FORD MOTOR CAR COMPANY, a Corporation,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Copartners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY.

**Order Granting Motion to Dissolve Order to Show Cause and Denying Application for Temporary Restraining Order.**

March 25, 1918.

This cause was heard by the Court upon the order for the defendant herein to show cause why they should not be temporarily restrained and enjoined from issuing or causing to be issued a writ of execu-

tion upon the judgment in that certain cause No. 7163, in favor of the defendants above named and against the plaintiff above named, and upon the motion of the defendants herein to dissolve the order to show cause herein, and was argued by Mr. Hugh Montgomery, of counsel for said plaintiff, and by Mr. Charles A. Hardy and Mr. I. N. Smith of counsel for said defendants, upon consideration whereof,

IT IS ORDERED that the defendants motion to dissolve the order to show cause herein be and the same is hereby allowed and the application of the plaintiff above named for a temporary restraining order be, and the same is hereby denied.

CHAS. E. WOLVERTON,
Judge.

Filed Mar. 25, 1918. G. H. Marsh, Clerk. [77]

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AND AFTERWARDS, to wit, on the 2d day of August, 1918, there was duly filed in said court an amended bill of complaint, in words and figures as follows, to wit: [78]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Amended Bill of Complaint.**

COMES NOW the plaintiff above named, and leave of Court therefor having been obtained, files this, its amended bill of complaint, and for cause of suit against the defendants complains and alleges as follows:

I.

That during all the time hereinafter mentioned the plaintiff was, and still is, a corporation incorporated, organized and existing under and by virtue of the laws of the State of Michigan, with its factory and place of business at Highland Park, Michigan, and has conformed to the laws of the State of Oregon, authorizing foreign corporations to do business within the State of Oregon, and is a citizen and resident of the State of Michigan.

II.

That during all the times hereinafter mentioned, the defendants V. W. Winchell and F. M. Hathaway were copartners doing business under the firm name and style of "Eugene Ford Auto Company" in the city of Eugene, State of Oregon, and were, and still are, citizens of the State of Oregon. [79]

III.

That on or about the 10th day of September, 1915, the plaintiff and defendants entered into a contract known as a "Limited Agency Contract," wherein and whereby the plaintiff appointed the defendants as its limited agents within certain territory in the State of Oregon, for the purpose of negotiating sales of Ford automobiles to users only, which said con-

tract further provided that the same should remain in force and govern all transactions between the parties until July 31st, 1916, upon the condition, however, that either party might be at liberty to terminate and cancel the contract upon written notice by registered mail, at any time, with or without cause, a copy of which is hereby attached, marked Exhibit "A."

IV.

That on or about the 25th day of May, 1916, the plaintiff, acting under and in accordance with the provisions of said contract of agency, terminated said agency contract by letter, duly registered and forwarded to the defendants through the mails of the United States, and was ready, able and willing to perform all the conditions of said cancellation as in said Exhibit "A" required.

V.

That at the time of the cancellation of said contract, said defendants had in their possession thirty-six touring cars and one sedan, which had been consigned by the plaintiff to said defendants under and in accordance with the provisions and upon the conditions set forth in said agency contract.

VI.

That prior to the cancellation of said contract, and on or about the 22d day of April, 1916, the 1st day of May, 1916, and the 24th day of May, 1916, respectively, the said defendants procured from the First National Bank of Eugene, Oregon, the sum of $14,000.00, evidenced by their three several promissory [80] notes, bearing dates the 22d day of

April, 1916, the 1st day of May, 1916, and the 24th day of May, 1916, respectively, the first note being for the sum of $2,800.00, the second note being for the sum of $2,800.00, and the third note being for the sum of $8,400.00, each of which notes was secured by a chattel mortgage executed by the defendants upon the said thirty-six cars and one sedan, referred to in Paragraph V of this amended bill of complaint, which said sums of money were in form so procured from the First National Bank of Eugene, Oregon, by the defendants individually, although in truth and in fact the said defendants, in obtaining said sums of money, and in executing and delivering said notes and said chattel mortgage to secure the payment of the same, were acting as the agents of the plaintiff under and in accordance with the provisions of said contract referred to in Paragraph III of this amended bill of complaint, and said defendants, after procuring said sums of money as the agents of the plaintiff, converted the same to their own use and benefit.

VII.

That subsequent to the termination of said agency contract, as set out in Paragraph IV hereof, the plaintiff on or about the 3d day of June, 1916, began an action of replevin in the District Court of the United States for the District of Oregon against the defendants named as defendants in this case, and others, as defendants to obtain possession of the automobiles mentioned in Paragraph V hereof, and the said automobiles were on or about the 5th day of June, 1916, taken possession of by the United States

Marshal for the District of Oregon, under process, in said replevin proceeding, duly issued, and, thereafter [81] said Marshal turned over and delivered to the plaintiff herein the said automobiles, and said plaintiff thereafter retained the same. Said replevin case subsequently came on for trial in said court before the Judge thereof and a jury, and was tried on the 6th day of September, 1916, and the jury in said cause rendered a verdict that the defendants Winchell and Hathaway were entitled to recover from the plaintiff the value of said automobiles, fixed at $16,077.50, and $6,000.00 damages, and on the 11th day of September, 1916, a judgment was duly entered by said court upon said verdict, and the said sum of $16,077.50 is the same amount as the 85% advanced by said defendants to the plaintiff under and pursuant to the contract referred to in Paragraph III hereof, and said sum of $16,077.50 was included in the amount of the judgment in said case subsequently paid by the plaintiff under the compulsion of an execution, and to avoid a levy on its property located in the City of Portland, Oregon, by the Marshal for the District of Oregon, which payment was made on the 27th day of March, 1918.

VIII.

That on or about the 10th day of June, 1916, the plaintiff paid to the said First National Bank of Eugene, Oregon, the sum of $12,676.38, being the amounts then due on said three promissory notes, and procured from said bank a release of the lien created by the defendants upon said automobiles in the manner hereinbefore set forth in Paragraph VI,

and said plaintiff made such payment to said First National Bank of Eugene, Oregon, of the said sum of $12,676.38 because the said defendants had not made such payment, and by the execution of said chattel mortgage on said automobiles had created a lien thereon, and said defendants, the agents of the plaintiff, received credit on their said notes for the sum of $12,676.38, so paid said The First National Bank of Eugene, Oregon, and have refused to credit the same against said judgment, and still refuse to pay said sum of money, or [82] any part thereof, to the plaintiff herein, although demand has been made therefor, and although the plaintiff paid said sum to the said First National Bank of Eugene, Oregon, and secured a release of the lien imposed upon the said automobiles, which were owned by the plaintiff at the time when said chattel lien was imposed thereon by the defendants, the agents of the plaintiff, and the said defendants have received the double payment of said amount paid by this plaintiff on said notes, and have received and retained the possession of the sum of $12,676.38, which in equity and good conscience belongs to the plaintiff, and the amount of money so paid by the plaintiff to the First National Bank of Eugene, Oregon, constituted a portion of the amount of money to which the defendants were entitled under and by virtue of the terms of the agreement referred to in Paragraph III of this amended bill of complaint upon the cancellation of said contract by the plaintiff, as in Paragraph IV of this amended bill of complaint alleged, and the plaintiff made an offer in writing to pay to the defendants

the particular sums of money to which the defendants were entitled by reason of the cancellation by the plaintiff of the contract set forth in Paragraph III of this amended bill of complaint, which offer the defendants have at all times refused to accept, and which offer the plaintiff was at all times ready, willing and able to carry out, in the manner alleged in Paragraph IV of this amended bill of complaint. That said payment to the said First National Bank of Eugene, Oregon, was made on behalf of plaintiff under the belief that it was necessary to entitle the plaintiff to have returned to it, pursuant to the terms of said agency contract, the automobiles remaining in the hands of the defendants, and that the said defendants were entitled to receive from plaintiff 85% of the list price thereof, and that the said Eugene Bank was entitled, by reason of said promissory notes and said chattel mortgage, to receive $12,676.38 thereof, borrowed from it. That to the extent of $12,676.38 hereinbefore referred to, in the hands of the defendants, by reason of the transactions with the First National Bank of [83] Eugene, hereinbefore set out, the payment of said judgment under the compulsion of an execution as aforesaid, constitutes a double payment to the defendants of the 85% advances, the repayment of which they were entitled to under the terms of said agency contract, referred to in Paragraph III hereof, and which the plaintiff was equitably entitled to have offset against said judgment *pro tanto.*

IX.

That on the 25th day of February, 1918, prior to

the payment of said judgment as hereinbefore alleged, and prior to the time when execution was ordered upon said judgment by the attorneys for Winchell and Hathaway, the judgment creditor, the plaintiff herein filed its complaint in this case, seeking to have offset *pro tanto* against the judgment aforesaid, said sum of $12,676.38, and seeking an injunction against the collection of the entire judgment, and an application was made for an order restraining the collection of said judgment in its entirety pending the determination of the plaintiff's right to have an offset as aforesaid, which temporary restraining order was refused by the Court upon a finding that the defendants were not insolvent as alleged in said original complaint, and by reason of the refusal of the Court to grant said temporary restraining order, the plaintiff was compelled to, and did, pay the entire judgment as aforesaid, notwithstanding the fact that the defendants had received, by reason of the transactions aforesaid with the First National Bank of Eugene, the sum of $12,676.38 of the amount for which judgment was given them as aforesaid.

X.

That by reason of the premises, the plaintiff is entitled to have maintained, as existing obligations of defendants, said promissory notes and chattel mortgage given to said First National Bank of Eugene, Oregon, and plaintiff is entitled to be subrogated to the rights, claims and remedies of said First National Bank of Eugene against the said defendants and to recover of and [84] from the defendants

and each of them the sum of $12,676.38, with interest thereon from the 11th day of September, 1916.

XI.

That this is a controversy between citizens of different states, and involves more than Three Thousand Dollars, exclusive of interest and costs.

XII.

That plaintiff has no plain, speedy or adequate remedy at law, but only in equity.

AND FOR A FURTHER AND SEPARATE CAUSE OF ACTION against the defendants, plaintiff complains and alleges as follows:

I.

That during all the times hereinafter mentioned, the plaintiff was, and still is, a corporation incorporated, organized and existing under and by virtue of the laws of the State of Michigan, with its factory and place of business at Highland Park, Michigan, and has conformed to the laws of the State of Oregon authorizing foreign corporations to do business within the State of Oregon, and is a citizen and resident of the State of Michigan.

II.

That during all the times hereinafter mentioned, the defendants V. W. Winchell and F. M. Hathaway were copartners doing business under the firm name and style of "Eugene Ford Auto Company" in the city of Eugene, State of Oregon, and were, and still are, citizens of the State of Oregon.

III.

That on or about the 10th day of September, 1915, the plaintiff and defendants entered into a contract

known as a "Limited Agency Contract," wherein and whereby the plaintiff appointed the defendants as its limited agents within certain territory in [85] the State of Oregon, for the purpose of negotiating sales of Ford automobiles to users only, which said contract further provided that the same should remain in force and govern all transactions between the parties until July 31st, 1916, upon the condition, however, that either party might be at liberty to terminate and cancel the contract upon written notice by registered mail, at any time, with or without cause, a copy of which is hereto attached, marked Exhibit "A."

IV.

That on or about the 25th day of May, 1916, the plaintiff, acting under and in accordance with the provisions of said contract of agency, terminated said agency contract by letter, duly registered and forwarded to the defendants through the mails of the United States, and was ready, able and willing to perform all the conditions of said cancellation as in said Exhibit "A" required.

V.

That at the time of the cancellation of said contract, said defendants had in their possession thirty-six touring cars and one sedan, whic hhad been consigned by the plaintiff to said defendants under and in accordance with the provisions and upon the conditions set forth in said agency contract.

VI.

That prior to the cancellation of said contract, and on or about the 22d day of April, 1916, the 1st day of

May, 1916, and the 24th day of May, 1916, respectively, the said defendants procured from the First National Bank of Eugene, Oregon, the sum of $14,000.00, evidenced by their three several promissory notes, bearing dates the 22d day of April, 1916, the 1st day of May, 1916, and the 24th day of May, 1916, respectively, the first note being for the sum of $2,800.00, the second note being for the sum of $2,800.00, and the third note being for the sum of $8,400.00, each of which notes was secured by a chattel mortgage [86] executed by the defendants upon the said thirty-six cars and one sedan, referred to in Paragraph V of this complaint. That pursuant to the terms of the contract referred to in Paragraph III hereof, the said defendants advanced to the plaintiff 85% of the list price of said automobiles, and thereby became and were entitled to, and had a lien upon, the automobiles to secure the repayment thereof, and thereby, upon receipt of the possession of said automobiles became entitled to and had a special property to the extent of said lien in said automobiles, and the effect and extent of said chattel mortgage was to assign and transfer to the said First National Bank of Eugene, Oregon, said special property in said automobiles, to secure to said bank the repayment to it of the sums borrowed from it as aforesaid, which sums aggregated less than the aggregate of said 85% advances.

VII.

That subsequent to the termination of said agency contract, as set out in Paragraph IV hereof, the plaintiff, on or about the 3d day of June, 1916, began

an action of replevin in the District Court of the United States for the District of Oregon against the defendants named as defendants in this case, and others, as defendants, to obtain possession of the automobiles mentioned in Paragraph V hereof, and the said automobiles were, on or about the 5th day of June, 1916, taken possession of by the United States Marshal for the District of Oregon, under process, in said replevin proceeding, duly issued, and, thereafter said marshal turned over and delivered to the plaintiff herein the said automobiles, and said plaintiff thereafter retained the same. Said replevin case subsequently came on for trial in said court before the Judge thereof and a jury, and was tried on the 6th day of September, 1916, and the jury in said cause rendered a verdict that the defendants Winchell and Hathaway were entitled to recover from the plaintiff the value of said automobiles, fixed at $16,077.50 and $6,000.00 damages, and on the 11th day of [87] September, 1916, a judgment was duly entered by said Court upon said verdict, and the said sum of $16,077.50 is the same amount as the 85% advanced by said defendants to the plaintiff under and pursuant to the contract referred to in Paragraph III hereof, and said sum of $16,077.50 was included in the amount of the judgment in said case subsequently paid by the plaintiff under the compulsion of an execution, and to avoid a levy on its property located in the city of Portland, Oregon, by the marshal for the District of Oregon, which payment was made on the 27th day of March, 1918.

VIII.

That on or about the 10th day of June, 1916, the plaintiff paid to the said First National Bank of Eugene, Oregon, the sum of $12,676.38, being the amounts then due on said three promissory notes, and procured from said bank a release of the lien created by the defendants upon said automobiles in the manner hereinbefore set forth in Paragraph VI, and said plaintiff made such payment to said First National Bank of Eugene, Oregon, of the said sum of $12,676.38 because the said defendants had not made such payment, and by the execution of said chattel mortgage on said automobiles had created a lien thereon. That said payment was made by the plaintiff to said First National Bank of Eugene, in order to relieve and discharge the said automobiles from the mortgage or lien so created by the defendants upon their interest in said automobiles in favor of said First National Bank of Eugene, and said defendants received credit on their said notes for the sum of $12,676.38, so paid the said First National Bank of Eugene, Oregon, and have refused to credit the same against said judgment, and still refuse to pay said sum of money, or any part thereof, to the plaintiff herein, although demand has been made therefor, and although the plaintiff paid said sum to the said First National Bank of Eugene, Oregon, and secured a release of the lien imposed [88] upon the said automobiles, which were owned by the plaintiff at the time when said chattel lien was imposed thereon by the defendants and the said defendants have received the sum of $12,676.38, or the double

payment of said amount paid by this plaintiff on said notes, and have received and retained the possession of the sum of $12,676.38, which in equity and good conscience belongs to the plaintiff, and the amount of money so paid by the plaintiff to the First National Bank of Eugene, Oregon, constitutes a portion of the amount of money to which the defendants were entitled under and by virtue of the terms of the agreement referred to in Paragraph III, upon the cancellation of said contract by the plaintiff, as in Paragraph IV alleged. That plaintiff made said payment to said bank believing that said bank, by reason of said notes and chattel mortgage had acquired and was entitled to hold the lien on, or special property in, said automobiles existing in the defendants by reason of the 85% advances made by them to plaintiff pursuant to said agency contract, and believing that said bank was entitled to the payment thereof as against the defendants, and plaintiff made said payment to said bank, believing that it was bound so to do to relieve said automobiles from said lien for said advances, and to entitle plaintiff to repossess itself of said automobiles as it was in said agency contract provided it might. That to the extent of $12,676.38 hereinbefore referred to, in the hands of the defendants, by reason of the transactions with the First National Bank of Eugene, hereinbefore set out, the payment of said judgment under the compulsion of an execution as aforesaid, constitutes a double payment to the defendants of the 85% advances, the repayment of which they were entitled to under the terms of said agency contract, referred

to in Paragraph III hereof, and which the plaintiff was equitably entitled to have offset against said judgment *pro tanto.* [89]

IX.

That on the 25th day of February, 1918, prior to the payment of said judgment as hereinbefore alleged, and prior to the time when execution was ordered upon said judgment by the attorneys for Winchell and Hathaway, the judgment creditor, the plaintiff herein filed its complaint in this case, seeking to have offset *pro tanto* against the judgment aforesaid, said sum of $12,676.38, and seeking an injunction against the collection of the entire judgment, and an application was made for an order restraining the collection of said judgment in its entirety pending the determination of the plaintiff's right to have an offset as aforesaid, which temporary restraining order was refused by the Court upon a finding that the defendants were not insolvent as alleged in said original complaint, and by reason of the refusal of the Court to grant said temporary restraining order, the plaintiff was compelled to, and did, pay the entire judgment as aforesaid, notwithstanding the fact that the defendants had received, by reason of the transactions aforesaid with the First National Bank of Eugene, the sum of $12,676.38 of the amount for which judgment was given them as aforesaid.

X.

That by reason of the premises, the plaintiff is entitled to have maintained, as existing obligations of defendants, said promissory notes and chattel mort-

gage given to said First National Bank of Eugene, Oregon, and plaintiff is entitled to be subrogated to the rights, claims and remedies of said First National Bank of Eugene against the said defendants, and to recover of and from the defendants and each of them the sum of $12,676.38, with interest thereon from September 11th, 1916.

XI.

That this is a controversy between citizens of different States, and involves more than $3000.00, exclusive of interest and costs. [90]

XII.

That plaintiff has no plain, speedy or adequate remedy at law, but only in equity.

WHEREFORE, plaintiff prays:

1. For a decree and judgment that it be subrogated to all the rights, claims, demands and remedies of the said First National Bank of Eugene against the defendants, and that plaintiff have judgment and decree against said defendants, and against each of them for the sum of $12,676.38 with interest thereon from the 11th day of September, 1916.

2. That this Honorable Court may grant unto the plaintiff a writ of subpoena of the United States, directed to the defendants V. W. Winchell and F. M. Hathaway, therein and thereby commanding said defendants, under a certain penalty therein to be named, personally to be and appear before your Honorable Court, then and there to answer all and singular the matters and things aforesaid, and to stand and abide by, and sustain such direction and

decree as shall be made herein as to this Court may seem equitable and just.

3. For such other and further relief as to the Court may seem equitable and proper.

PLATT & PLATT,
Solicitors for Plaintiff.

HARRISON G. PLATT,
Of Counsel. [91]

State of Oregon,
County of Multnomah,—ss.

I, Alva W. Jones, being first duly sworn, depose and say that I am the Manager of the Portland Branch of the Ford Motor Company, the plaintiff in the above-entitled suit; and that the foregoing amended complaint is true as I verily believe.

ALVA W. JONES.

Subscribed and sworn to before me this 20 day of July, 1918.

[Seal] C. G. BUCKINGHAM,
Notary Public in and for the State of Oregon.
My commission expires 6/23/20.

Due service of the within amended complaint by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, this 31st day of July, 1918.

CHARLES A. HARDY,
Of Attorneys for Defendants.

U. S. District Court. Filed Aug. 2, 1918. G. H. Marsh, Clerk. [92]

AND AFTERWARDS, to wit, on the 13th day of September, 1918, there was duly filed in said court a motion to strike amended bill of complaint from the files, in words and figures as follows, to wit: [93]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Motion to Strike Amended Bill of Complaint from the Files and for Judgment Dismissing the Cause.**

Come now the defendants above named and move the Court that the amended bill of complaint filed herein be stricken from the files, and that a judgment dismissing this cause be entered upon the following grounds and for the following reasons:

I.

That there has been filed heretofore in this cause and is of record in this case the printed transcript on writ of error in the law action of the Ford Motor Company, the plaintiff above named, against V. W. Winchell and F. M. Hathaway and others heretofore determined in this cause, and which said action was

commenced in this court by this plaintiff on the 27th day of May, 1916, and is referred to in the amended bill of complaint, and that said transcript of error was heretofore filed in this cause on motion for a temporary injunction herein; and for the purpose of this motion, this Court is respectfully asked to take judicial notice and knowledge of the written record and files of this cause, including the original bill of complaint, and the transcript on writ of error in the said law action, between the parties hereto.

The defendants move to dismiss and to strike the amended bill of complaint from the files and for judgment dismissing this cause for the following reasons: [94]

(1) By the said law action, which was affirmed by the Circuit Court of Appeals of the United States for the Ninth Judicial District, these defendants were adjudged to be the owners of the automobiles involved in that case and referred to in the alleged limited agency contract, a copy of which contract is attached to the amended bill of complaint herein;

(2) By verdict in the law action and the said judgment which was affirmed by the United States Circuit Court of Appeals these defendants were adjudged to be the owners of said property at the time the said law action was instituted.

II.

That the said automobiles so owned by defendants are the same automobiles referred to in plaintiff's amended bill of complaint herein, as shown by the records and files in said action.

III.

That by reason of the ownership of such automobiles by the said defendants, the said defendants mortgaged them to the First National Bank of Eugene, Oregon, and said mortgage was made by these defendants individually and is the mortgage referred to in Paragraph 6 of the amended bill of complaint herein; and that the allegations in said paragraph 6 of the said amended bill of complaint from lines 11 to 18 inclusive thereof, are shown to be untrue by the records in this case.

That neither the alleged agency contract nor any relation shows that these defendants made this mortgage as the agent of the plaintiff and that there is no provision in the said alleged agency contract authorizing these defendants to mortgage any property belonging to plaintiff for plaintiff.

That in mortgaging said property for their own benefit these defendants acted within their rights, and that *the* did not convert the money of the plaintiff, or any of plaintiff's money to their own use.

That said paragraph 6 of said amended bill of complaint wherein it charges the facts and things set forth at lines 11 to 18 [95] thereof is false and untrue and stultifies the record as herein shown.

That in the said replevin action, as shown by the printed transcript on writ of error therein, these defendants filed counterclaims, and the plaintiff did not plead the assignment of the alleged mortgage described in Paragraph 6 of the amended bill of complaint to the plaintiff, nor did it assert its alleged right or any claim of right to equitable subrogation,

nor did the plaintiff claim that these defendants had mortgaged their property, nor did the plaintiff set forth any claim of right or recovery by reason of the payment of the mortgage to the First National Bank of Eugene, Oregon, by plaintiff.

That this amended complaint and the entire record in this cause shows that the plaintiff in making the payment of the mortgage to the First National Bank of Eugene, Oregon, acted solely as a volunteer, and not otherwise, and did not make such payment at the request of these defendants, or either of them, or under any liability, either in law or equity of plaintiff on the indebtedness secured by said mortgage.

The record on appeal in said law action fails to show any assignment or error argued on such appeal for failure of the trial court to offset the amount paid by plaintiff on such mortgage, against the judgment awarded these defendants.

By motion for nonsuit, as shown by said transcript in the said law action, as well as by motion for directed verdict, and by the ruling of the Court on the motion made by plaintiff to grant a new trial or to modify the judgment rendered therein in favor of the defendants to offset the sum paid by plaintiff to the First National Bank of Eugene, Oregon, as a counterclaim or offset against the judgment of defendants, the United States District Court for the District of Oregon, adjudged and decided that the plaintiff is not entitled to offset or recover such amount so paid by plaintiff to the First National Bank of Eugene, Oregon; and also that the plaintiff was not entitled to be subrogated in the place [96]

of the mortgagee; and also that the plaintiff had no right in the premises.

On the said appeal of said law action, the plaintiff did not assign any of such rulings as error, and the questions involved in this suit and set forth in the amended bill of complaint herein, and asserted by reason of the pretended facts alleged in said bill of complaint and particularly in Paragraph 6 of said amended bill of complaint, and the following paragraphs of said amended bill of complaint, have all been finally determined, decided and adjudicated adversely to the plaintiff herein.

IV.

That the replevin cause referred to in Paragraph 7 of the amended bill of complaint herein and the various steps taken therein in said suit, and all of the proceedings had at the trial of said cause are all before the Court in this case and the record heretofore presented; and this Court is requested to take judicial notice and knowledge and these defendants here and now make profert thereof and demand oyer thereof.

These defendants move to strike the amended bill of complaint and for judgment of dismissal in this cause for the further ground that said paragraph 7 of the amended bill of complaint herein shows that after the affirmance of said judgment, the plaintiff paid the same under process of this Court, and that in this cause, this plaintiff sought an injunction to restrain the enforcement of such judgment and to prevent the defendants from collecting the said judgment for all the reasons now urged in the amended

bill of complaint, and that this Court refused the said injunction and no appeal was taken therefrom.

That the question of whether the said injunction should issue involves the merits of this controversy, and while the order thereon was interlocutory in form, it was final in fact, and by reason of no appeal being taken therefrom, the matter set forth in the amended bill of complaint and asserted by reason of the pretended fact alleged in Paragraph 7 have been finally determined in favor of these defendants. [97]

V.

These defendants further move to strike the amended bill of complaint from the files herein, and for a judgment of dismissal upon the ground that the matters and things set forth in Paragraph 8 of said amended bill of complaint have been adjudicated adversely to plaintiffs, and that by the proceedings in the law action, it was determined and adjudicated that the plaintiff made the payment to the First National Bank of Eugene, Oregon, voluntarily and without necessity in law or equity therefor and without any request or authority, directly or impliedly, of these defendants, or either of them, to make such payment, and that no relation existed between the plaintiff and these defendants, or either of them, which required the plaintiff to make such payment, and that these defendants were at the time of such payment the owners of said automobiles; and upon the further ground that the facts set forth in said paragraph show that the plaintiff made such payment without any request or authority from the defendants, and without any legal or equitable neces-

sity or right so to do, and that the plaintiff is not entitled to ask subrogation herein.

VI.

The defendants move to strike this amended bill of complaint and for judgment of dismissal in this cause upon the further ground that Paragraph 9 of the said amended bill of complaint affirmatively shows that in this court and cause the plaintiff sought to restrain the enforcement of the judgment recovered by the defendants as to the amount of the payment which plaintiff made to the First National Bank of Eugene, Oregon.

VII.

The defendants further move to strike the amended bill of complaint from the files herein and for judgment of dismissal based upon the record in this cause together with the record in said replevin action between these parties upon the following grounds:

(a) That said records show that the plaintiff does not come into court with clean hands, and that the plaintiff has committed inequity in relation to the automobiles involved, and wilfully [98] and unlawfully trespassed upon the rights of the defendants in relation thereto, and while guilty of such trespass and inequity, the plaintiff voluntarily paid the mortgage which the said defendants placed upon the said automobiles, and did not ask for or receive any assignment of said mortgage, nor did the plaintiff profess to make such payment by reason of the alleged fact or claim that these defendants were the agents of plaintiff in making such mortgage, and that

the pretense now set forth in the amended bill of complaint herein, that these defendants were the agents of plaintiff in making such mortgage, and executed such mortgage as said agents, is untrue and is a sham and an attempted fraud upon this court, and is inserted by the plaintiff maliciously for the purpose of continously harassing these defendants with vexatious and groundless litigation in respect to matters already determined and settled by the courts of the United States in favor of these defendants, and this suit is filed, and the charges of embezzlement and conversion of plaintiff's money inserted in the bill of complaint against these defendants without justification or excuse, and solely for the purpose of annoying these defendants and defaming and injuring their reputation and business standing, and that the said amended bill of complaint does not state any equity in favor of the plaintiff and against these defendants, or either of them, or any cause of suit against these defendants, or either of them.

CHARLES A. HARDY, of Eugene, Oregon.
ISHAM N. SMITH, of Wallace, Idaho,
Attorneys for Defendants.

[Endorsed]: Filed Sept. 13, 1918. G. H. Marsh.
[99]

AND AFTERWARDS, to wit, on Monday, the 30th day of September, 1918, the same being the 79th judicial day of the regular July term of said court,—Present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [100]

*In the District Court of the United States for the District of Oregon.*

No. 7768.

FORD MOTOR COMPANY

vs.

V. W. WINCHELL et al.

**Order Overruling Motion to Strike Amended Bill of Complaint and to Dismiss, etc.**

September 30, 1918.

Now, at this day, this cause comes on to be heard by the Court upon the motion of the defendants above named to strike the amended bill of complaint from the files, and to dismiss, the plaintiff appearing by Mr. Hugh Montgomery, of counsel, and defendants appearing by Mr. Charles A. Hardy and Mr. I. N. Smith of counsel. And the Court having heard the arguments of counsel and being fully advised in the premises, IT IS ORDERED that said motion be and the same is hereby overruled.

And thereupon upon motion of said defendants, IT IS FURTHER ORDERED that they be and they are

hereby allowed ninety days from this date within which to file *their herein.* [101]

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AND AFTERWARDS, to wit, on the 24th day of January, 1919, there was duly filed in said court, an answer to the amended bill of complaint, in words and figures as follows, to wit: [102]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased; and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL & F. M. HATHAWAY, Copartners Formerly Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY.
Defendants.

**Answer to Amended Bill of Complaint.**

Comes now the above-named defendants and for their answer to the amended bill of complaint admit, deny and allege as follows:

Admit that at the times mentioned in the amended bill of complaint, the plaintiff was still *is a* corporation organized under the laws of the State of Michigan, and has conformed to the laws of the State of Oregon,

authorizing foreign corporations to do business herein; and is a citizen and resident of the State of Michigan.

Admit that during the times mentioned in the amended bill of complaint V. W. Winchell and F. M. Hathaway were copartners doing business under the firm name and style of Eugene Ford Auto Company, in the city of Eugene, State of Oregon, and were citizens of the State of Oregon.

Admit that on or about the 10th day of September, 1915, the plaintiff and said Winchell and Hathaway entered into a contract, but deny that said contract provided that plaintiff appointed said Winchell & Hathaway or either of them as its limited agents for the purpose of negotiating the sale of Ford automobiles to [103] users only, or otherwise than as hereinafter alleged or that said contract further provided that the same should remain in force or govern all or any transactions between the parties until July 31, 1916, or any time, or otherwise or at all, than as hereinafter alleged; or upon the condition that either party might be at liberty to terminate or cancel such contract upon written, or any notice, by registered mail or otherwise, or at any time, or with or without cause or otherwise, or at all, except as hereinafter alleged.

Denies that on or about the 25th day of May, 1916, or at any time the plaintiff, acting under or in accordance with the provisions of said or any contract or agency terminated said, or any, agency contract by letter, or otherwise, duly registered or forwarded to the defendants through the mails of the United

States, or otherwise, or at all, except as hereinafter alleged; or was ready, able or willing to perform all or any of the conditions of said, or any, cancellation as in said or any contract required, or otherwise, or at all, except as hereinafter alleged.

Denies that at the time of the alleged cancellation of said or any contract, or at any time, said Winchell or Hathaway, or either of them, had in their possession thirty-six, or any touring cars or one sedan which had been consigned by the plaintiff to the said defendants, or either of them, under or in accordance with the provisions or any provisions, or upon the conditions or any conditions, set forth in the said or any agency contract, or otherwise, or at all, except as hereinafter alleged.

Denies that prior to the cancellation of said or any contract, or on or about the 22d day of April, 1916, or the 1st day of May, 1916, or the 24th day of May, 1916, or at any time, the said Winchell & Hathaway or either of them procured from the First National Bank of Eugene, Oregon, or elsewhere, the sum of Fourteen Thousand Dollars, or any sum, evidenced by three several promissory notes or otherwise, or bearing date the 22d day of April, 1916, or the 2d day of May, 1916, or the 24th day of [104] May, 1916, or any other date, or the first, or any, note being for the sum of $2,800.00, or any other sum, or the second note being for the sum of $2,800.00, or any sum; or the third note being for the sum of $8,400.00 or any other sum, or otherwise or at all, except as hereinafter alleged; or that each of which or any notes was secured by a chattel, or any, mortgage, executed by the said

Winchell & Hathaway, or either of them, upon the said or any 36 cars, or one sedan, referred to in Paragraph 5 of the Amended Bill of Complaint, or otherwise, or at all, except as hereinafter alleged, or which said sums of money, or any sums of money, were in form, so procured from the First National Bank of Eugene, Oregon, by Winchell or Hathaway, individually or otherwise, or at all, except as hereinafter alleged; or that in truth or in fact the said Winchell or Hathaway, or either of them, in obtaining said, or any sums of money, or in executing said or any notes, or said, or any, chattel mortgage to secure payment of the same, or otherwise, were acting as agents of the plaintiff, or under or in accordance with the provisions of said, or any, contract referred to in Paragraph 3 of the Amended Bill of Complaint, or otherwise, or that said defendants, or said Winchell or Hathaway, or either of them, after procuring said or any sums of money as the agents of the plaintiff converted the same to their own use or benefit, or otherwise, or at all, except as alleged hereinafter.

Denies that subsequent to the termination of said, or any agency contract, as set forth in Paragraph 4 or otherwise, the plaintiff began an action of replevin in the District Court of the United States for the District of Oregon, against the defendants, or either of them, named as defendants in this case, to obtain possession of the, or any, automobiles mentioned in Paragraph 5 of the Amended Bill of Complaint, or otherwise, or at all, except as hereinafter alleged; or that the said or any automobiles were on or about the 5th day of June, 1916, or at any time, taken posses-

sion of by the United States Marshal for the District of Oregon, under process in said, or any, replevin proceedings, duly issued, or otherwise than as hereinafter alleged; or that thereafter said or any [105] marshal turned over or delivered to the plaintiff herein the said, or any, automobiles, or that the plaintiff thereafter, or at any time, retained the same, or otherwise, or at all, except as hereinafter alleged. Denies said or any replevin cases subsequently came on for trial in said or any court, before the Judge thereof, or a jury, or was tried on the 6th day of September, 1916, or at any time, except as hereinafter alleged, or that the jury in said or any cause, returned a verdict that the defendants Winchell or Hathaway were entitled to recover from the plaintiff the value of said, or any, automobiles, and fixed at $16,077.50, or any other sum, or $6,000.00 damages, or on the 11th day of September, 1916, or any other time, a judgment was duly entered by said, or any Court, upon said or any verdict, except as hereinafter alleged; or that the said, or any, sum of $16,077.50, is the same amount as 85% *per cent,* or any per cent advanced by the said, or any defendants, to the plaintiff, or any other person, or under or pursuant to the, or any, contract referred to in Paragraph 3 of the amended bill of complaint, or elsewhere, or otherwise, except as hereinafter alleged; or that the said sum of $16,077.50, or any sum, was included in the amount of the judgment, or any judgment in said, or any, case, subsequently or otherwise paid by the plaintiff under the compulsion of an execution, or to avoid a levy on its property located in the city of Portland, Oregon, or elsewhere, by the

Marshal for the District of Oregon, or any other person, which payment, or any payment, was made on the 27th day of March, 1918, or at any time, or otherwise, or at all, except as hereinafter alleged.

Denies on or about the 10th day of June, 1916, or at any time, the plaintiff paid to the First National Bank of Eugene, Oregon, or any other person, the sum of $12,676.38, or any other sum, or being the amounts, or any amount, then due on said three, or any, promissory notes, or otherwise, or at all, except as hereinafter alleged; or procured from said, or any, bank, a release of the, or any, lien created by the defendants, or either of them, or Winchell or Hathaway, upon the said, or any, automobiles in the [106] manner set forth in Paragraph 6 in the amended bill of complaint, or otherwise, or that the plaintiff made such, or any, payment to the said First National Bank of Eugene, Oregon, or any other person, of the sum of $12,676.38, or any other sum, because the defendants, or either of them, or Winchell or Hathaway, had not made such, or any payment, or otherwise or at all, except as hereinafter alleged, or that by the execution of said, or any, chattel mortgage on said, or any, automobiles the defendants, or either of them, or said Winchell or Hathaway, had created a lien thereon or otherwise, except as hereinafter alleged; or that the said defendants, or either of them, or Winchell or Hathaway, as agents of the plaintiff, or otherwise, received credit on their said, or any, notes, for the sum of $12,676.38, or any other sum, so or otherwise paid the First National Bank of Eugene, Oregon, or any other person, except as hereinafter alleged, or have refused to credit

the same, or any other sum, against said, or any, judgment, or still, or at all, refuse to pay the same, or any sum of money, or any part thereof, to the plaintiff herein, or any other person, except as hereinafter alleged, or that demand has been made therefor, or otherwise, except as hereinafter alleged, or that the plaintiff has paid said, or any, sum, to the First National Bank of Eugene, Oregon, or any other person, except as hereinafter alleged, or secured a release of the, or any, lien imposed upon the said, or any, automobiles, which were owned by the plaintiffs, or any other person, at the time, or any time, when said, or any, chattel lien was imposed thereon by the defendants, or either of them, or Winchell or Hathaway, or either of them, as the agents of the plaintiff, or otherwise, or that the said defendants, or either of them, or Winchell or Hathaway, have received double, or any payment of said, or any, amount paid by this plaintiff, or any other person, on the said, or any, notes, or otherwise, or at all, except as hereinafter alleged; or have received or retained the possession of the sum of $12,676.38, or any other sum, which in equity or good conscience or otherwise, belongs to the plaintiff, or any other person, or that the amount or any amount of money, so, or otherwise paid by the plaintiff to the First National Bank of [107] Eugene, Oregon, or any other person, constituted a portion, or any portion, of the, or any, sum of money to which the defendants, or either of them, or Winchell or Hathaway, were entitled under or by virtue of the terms of the, or any agreement, referred to in Paragraph 3 of the amended bill of complaint, or elsewhere upon the can-

cellation of said, or any, contract by the plaintiff, or any other person, or as in Paragraph 4 of the amended bill of complaint alleged, or otherwise, or that the plaintiff made an offer in writing, or otherwise, to pay to the defendants, or either of them, or to Winchell or Hathaway, the particular, or any, sums of money to which the defendants or either of them, or Winchell or Hathaway were entitled by reason of the, or any, cancellation by the plaintiffs, or any other persons, of the, or any, contract, set forth in Paragraph 3 of the amended bill of complaint, or elsewhere, or which, or any, offer the defendants, or either of them, or Winchell or Hathaway, have at all, or any times, refused to accept, or which, or any, offer the plaintiff was at all, or any times, ready, willing or able to carry out in the manner alleged in Paragraph 4 of the amended bill of complaint, or elsewhere, or otherwise, or at all, except as hereinafter alleged.

Denies that said or any payment to the First National Bank of Eugene, Oregon, or any other person, was made on behalf of plaintiff or any other person, under the belief that it was necessary, or otherwise, to entitle the plaintiff to have returned to it, pursuant to the terms of said, or any, agency contract, or otherwise, the, or any, automobiles remaining in the hands of the defendants or either of them, or Winchell or Hathaway, or that the defendants, or either of them, or Winchell or Hathaway, were entitled to receive from the plaintiffs 85 per cent, or any per cent of the list, or any, price, thereafter, or otherwise, or at all, or that the said Eugene Bank, or any bank, was entitled by reason of said, or any, promissory notes,

or said chattel mortgage, or any mortgage, to receive $12,676.38, or any amount borrowed from it or otherwise. [108]

Denies that to the extent of $12,676.38, or any sum, hereinbefore referred to, or otherwise, in the hands of the defendants, or either of them, or of Winchell or Hathaway, by reason of the transactions, or otherwise, with the First National Bank of Eugene, Oregon, or any other person, the payment of the said, or any judgment under the compulsion of an execution, or otherwise, constituted a double, or any, payment, to the defendants, or either of them, or Winchell or Hathaway, of the 85 per cent, or any per cent, advanced, or otherwise, or the repayment of which, or any sum, they or either of them, were entitled to under the terms of said, or any, agency contract referred to in Paragraph 3 of the amended bill of complaint, or elsewhere, or which the plaintiff was entitled, equitably or otherwise, to have offset against said judgment *pro tanto,* or otherwise, or at all, except as hereinafter alleged.

Denies that on the 25th day of February, 1918, or at any time prior to the payment of said, or any judgment, or prior to the time, or at any time, when execution was ordered upon said or any judgment by the attorneys for Winchell & Hathaway, or any other person, the judgment creditor, the plaintiff herein, filed its complaint in this case asking to have offset *pro tanto* against the judgment referred to in the amended bill of complaint, or otherwise, said sum of $12,676.38, or any sum, or seeking an injunction against the collection of the entire judgment, or any

judgment, or an application was made for an order restraining the collection of said or any judgment in its entirety, or otherwise, pending the determination of the plaintiff's right to have an offset, as set forth in the amended bill of complaint, or otherwise, except as hereinafter alleged, or which temporary, or any restraining order was refused by the Court upon a finding that the defendants were not insolvent as alleged, in the said original complaint or otherwise, or at all, except as hereinafter alleged, or by reason of the refusal of the Court to grant said or any, temporary restraining order, or otherwise, the plaintiff was compelled to and did pay [109] the entire or any judgment, or that notwithstanding the fact that the defendants, or either of them, or Winchell or Hathaway had received by reason of any transactions with the first National Bank of Eugene, Oregon, or any other person, of any other bank, the sum of $12,676.38, or any amount of the amount, or any amount for which any judgment was given them, as set forth in the amended bill of complaint, or otherwise, or at all, except as hereinafter alleged.

Denies that by reason of the matters set forth in the amended bill of complaint, or otherwise, the plaintiff is entitled to have maintained as existing, or any obligation of the defendants or either of them, or Winchell or Hathaway, said or any promissory notes or chattel mortgages given to the First National Bank of Eugene, Oregon, or any other person, or that plaintiff is entitled to be subrogated to the rights, claims or remedies of the First National Bank of Eugene, Oregon, or any other person against the defendants or

either of them, or against Winchell or Hathaway, or to have or recover, of or from the defendants or either of them, or from Winchell or Hathaway, or either of them, the sum of $12,676.38, or any sum, or with any interest thereon, or on any other sum from the 11th day of September, 1916, or any other time.

Admits that this is a controversy between citizens of different States and involves more than Three Thousand Dollars exclusive of interest and costs.

Denies plaintiff has no plain, speedy or adequate remedy at law, and denies that plaintiff has any remedy in equity.

FURTHER ANSWERING the alleged further and separate cause of action set forth in the amended bill of complaint, defendants admit that the plaintiff was and is a corporation as alleged in the amended bill of complaint in Paragraph 1 of the further and separate cause of action alleged.

Admit that at all the times mentioned in the amended bill of complaint that V. W. Winchell and F. M. Hathaway were copartners doing business under the firm name and style of Eugene Ford [110] Auto Company and citizens of the State of Oregon.

Deny that on or about the 10th day of September, 1915, or at any time the defendants and plaintiff entered into a contract known as a "Limited Agency Contract," or otherwise, except as hereinafter alleged, or that under said contract, the plaintiff appointed the defendants or either of them, or Winchell or Hathaway as its limited agents within certain territory of the State of Oregon, or elsewhere, for the purpose of negotiating sales of Ford automobiles to

users only, or otherwise, except as alleged hereinafter. Deny said or any contract provided further that the same should remain in force or govern all transactions between the plaintiff and the defendants until July 21, 1916, or at any other time upon the, or any condition, that either party might be at liberty to terminate or cancel the contract upon written notice, or any notice, by registered mail or otherwise, at any time, with or without cause, or otherwise or at all, except as hereinafter alleged.

Deny that on or about the 25th day of May, 1916, or at any time, the plaintiff acting under or in accordance with the provisions, or any provisions, of said contract, or any contract, terminated said agency contract, or any contract, by letter duly registered, or otherwise, or forwarded to the defendants, or either of them, or to Winchell or Hathaway through the mails of the United States, or otherwise, or was ready or able or willing to perform at all, or any of the conditions of said, or any, cancellation, as in Exhibit "A" required, or otherwise, or otherwise or at all, except as hereinafter alleged.

Deny that at the time of the cancellation of said contract or any contract, or at any time, the said defendants, or either or them, or Winchell or Hathaway, had in their possession 36 or any touring cars or one, or any, sedan, which had been consigned by the plaintiff to said defendants, or either of them, or to Winchell or Hathaway, under or in accordance with the provisions, or any provisions, or upon the conditions set forth in said, or any [111] agency contract, or otherwise, or at all, except as hereinafter alleged.

Deny that prior to the cancellation of said contract, or any contract, or at any time, or on or about the 22d day of April, 1916, or the 1st day of May, 1916, or the 24th day of May, 1916, or at any time, the said defendants, or either of them, or Winchell or Hathaway, procured from the First National Bank of Eugene, Oregon, or any other person the sum of $14,000.00, or any sum, evidenced by their three several promissory notes, or by any promissory notes, or otherwise, bearing date the 22d day of April, 1916, or the 1st day of May, 1916, or the 24th day of May, 1916, or any other time, or the first or any note being for the sum of $2,800.00, or any sum, or the second, or any note, being for the sum of $2,800.00, or any sum, or the third, or any note, being for the sum of $8,400.00, or any other sum, or each of which, or any notes, was secured by a chattel mortgage, or any mortgage, executed by the defendants, or either of them, or Winchell or Hathaway, upon the said, or any, 36 cars or sedan referred to in the amended bill of complaint, or otherwise, or at all, except as hereinafter alleged.

Deny that pursuant to the terms of the contract, or any contract, referred to in Paragraph 3 of the amended bill of complaint, or otherwise, the said defendants, or either of them or Winchell or Hathaway, advanced to the plaintiff 85 per cent, or any per cent, of the list, or any, price, of said, or any automobiles, or otherwise or at all, except as hereinafter alleged, or thereby or otherwise became or were entitled to or had a lien upon the, or any, automobiles to insure the repayment thereof, or otherwise, or at all, except as hereinafter alleged, or that thereby or upon the re-

ceipt of the possession of the said or any automobiles, or otherwise, became entitled to or had a special or any property to the extent of said or any lien in said automobiles, or in any automobiles or otherwise, or at all, except as hereinafter alleged; or that the effect or extent of said, or any, chattel mortgage was to assign or transfer to the said First National Bank of Eugene, [112] Oregon, or any other person, said or any special property in said or any automobiles, or to secure to said or any bank the repayment to it, or any person, of the, or any, sums borrowed from it, as alleged in the amended bill of complaint, or otherwise, and which or any sums aggregated less than the aggregate of said, or any, 85 per cent, or any other per cent of advances, or otherwise, or at all, except as hereinafter alleged.

Deny that subsequent to the termination of said, or any agency contract, or at any other time set out in Paragraph 4 of the amended bill of complaint, or elsewhere, the plaintiff on or about the 3d day of June, 1916, or at any time, began an action in replevin in the District Court of the United States for the District of Oregon, against the defendants, or either of them, named as defendants in this case, or Winchell or Hathaway, or others as defendants, to obtain possession of the, or any automobiles mentioned in Paragraph 5 of the amended bill of complaint, or elsewhere, or otherwise, or at all, except as hereinafter alleged, or that the said or any automobiles were on or about the 5th day of June, 1916, taken possession of by the United States Marshal for the District of Oregon, or any other person under process or

otherwise, in said or any replevin proceeding duly issued or otherwise; or thereafter said Marshal, or any other person turned over or delivered to the plaintiff herein, the said or any automobiles, or the plaintiff thereafter retained the same or any automobiles, or otherwise or at all, except as hereinafter alleged. Deny said or any replevin case subsequently came on for trial in said or any Court before the Judge thereof, or a jury, or was tried on the 6th day of September, 1916, or the jury in said, or any cause, rendered any verdict that the defendants Winchell or Hathaway or either of them, were entitled to recover from the plaintiff the said or any automobile fixed at value of $16,077.50, or any other sum, or $6,000.00 damages, or any damages, or on the 11th day of September, 1916, or at any time a judgment was duly entered by said or any court upon said, or any verdict, or otherwise or at all, except as hereinafter alleged, or that the said or any sum of [113] $16,077.50 is the same amount, or any amount, as 85 per cent, or any per cent advanced by said defendants, or either of them, or Winchell or Hathaway, to the plaintiff under or pursuant to the contract referred to in Paragraph 3 of the amended bill of complaint herein, or elsewhere, or that the said sum of $16,077.50 or any other sum was included in the amount of the judgment, or any judgment, in said or any case subsequently paid by the plaintiff under the compulsion of an execution or otherwise, or to avoid a levy on its property located in the city of Portland, or elsewhere, by the Marshal of the District of Oregon, or

any other person, which payment or any payment was made on the 27th day of March, 1918, or otherwise or at all, except as hereinafter alleged.

Deny that on or about the 10th day of June, 1916, or any other time, plaintiff paid to the First National Bank of Eugene, Oregon, or any other person, the sum of $16,676.38, or any other sum, being the amounts or any amounts due on said three or any promissory notes, or procured from said bank a release of any lien created by the defendants, or either of them, or by Winchell or Hathaway, upon the said or any automobiles in the manner set forth in Paragraph 5 of the amended bill of complaint, or elsewhere in said complaint, or otherwise, or at all, except as hereinafter alleged. Deny the plaintiff made such or any payment to the said First National Bank of Eugene, Oregon, or any bank of the said sum of $12,676.38, or any other sum, because the said defendants or either of them, or Winchell or Hathaway, had not made such or any payment or by execution of said chattel mortgage, or any mortgage, and on said or any automobiles had created any lien thereon, or otherwise or at all, except as hereinafter alleged. Deny that said or any payment was made by the plaintiff to the said First National Bank of Eugene, Oregon, or any other person, in order to relieve or discharge the said, or any automobiles, from the, or any, mortgage or lien created by the defendants, or either of them or by Winchell or Hathaway, upon their interest, or any interest in said or any automobiles in favor of said First National Bank of Eugene, [114] Oregon, or any other person, or

said defendants, or either of them, or said Winchell or Hathaway received credit on their said, or any notes for the sum of $12,676.38, or any other sum, so paid the said First National Bank of Eugene, Oregon, or any other person, or otherwise or at all, except as hereinafter alleged; or that the defendants or either of them, or Winchell or Hathaway, have refused to credit the same, or any other sum, against the said or any judgment and still refuse to pay said sum of money or any sum of money to the plaintiff herein, or that demand has been made therefor, or otherwise, or at all, except as hereinafter alleged, or that the plaintiff paid said, or any, sum to the First National Bank of Eugene, Oregon, or any other person, or secured the release of the or any, lien imposed upon the, or any, automobiles which were owned by the plaintiff, at the time when said or any chattel lien was imposed thereon by the defendants, or either of the, or said Winchell or Hathaway, or that the said defendants, or either of them, or Winchell or Hathaway, have received the sum of $12,676.38, or any other sum, or the double payment or any payment of said amount, or any amount paid by the plaintiff on said, or any, amounts, or have received or retained possession of the sum of $12,676.38, or any other sum, which in equity or good conscience belongs to the plaintiff, or any other person, or the amount of money so paid by the plaintiff, or any sum of money paid to the First National Bank of Eugene, Oregon, or any other person, constituted a portion of any sum of money to which the defendants, or either of them, or Winchell or Hathaway, were entitled

under or by virtue of the terms of the, or any agreement, referred to in Paragraph 3 or elsewhere upon the cancellation of said, or any contract, made by the plaintiff as in Paragraph 4 alleged or elsewhere. Deny the plaintiff made said or any payment, to said bank or any bank, believing the said bank or any bank by reason of said notes or any notes or chattel mortgage, or otherwise, had acquired or were entitled to hold the lien, or any lien, on or special, or any property in, said or [115] any automobiles existing in the defendants, or either of them, or Winchell or Hathaway, by reason of 85 per cent or any per cent advances made by them to plaintiff pursuant to said, or any agency contract, or believing that the said or any bank was entitled to the payment or any payment thereof as against the defendants or either of them, or as against Winchell or Hathaway, or that plaintiff made said or any payment to said bank, or any other person, believing it was bound so to do to relieve the said, or any automobiles, from said or any lien for said, or any advances, or to entitle plaintiff to repossess itself of said or any automobiles, as it was in said or any agency contract provided it might, or otherwise, or at all, except as hereinafter alleged. Deny that to the extent of $12,676.38, or any other sum in the hands of the defendants, or either of them, or of Winchell or Hathaway, by reason of the transactions, or any transactions, with the First National Bank of Eugene, Oregon, or any other person, in payment of said or any judgment under compulsion of any execution, or otherwise constituted a double or any payment to the defendants, or either of them, or

to Winchell or Hathaway, of the 85 per cent, or any per cent advances, for the repayment of which they, or either of them, were entitled to under the terms of said agency contract, or any contract referred to in Paragraph 3 of the amended bill of complaint or elsewhere, or which plaintiff was equitably or otherwise entitled to have offset against said judgment, or any judgment, *pro tanto,* or at all, or otherwise than as hereinafter alleged.

Deny that on the 25th day of February, 1918, or at any time prior to the payment of said or any judgment, as alleged in the amended bill of complaint, or otherwise, or prior to the time when execution was ordered upon said, or any judgment, by attorneys for Winchell and Hathaway, that the judgment creditor, the plaintiff herein, filed its complaint in this case, or any case, asking to have offset *pro tanto* against the judgment aforesaid, or any judgment, said sum of $12,676.38, or any sum, or seeking an injunction against the collection of the entire judgment, or any [116] judgment, or otherwise or at all, except as hereinafter alleged, deny that an application was made for an order restraining the collection of the said or any judgment in its entirety, or otherwise, pending the determination of the plaintiff's right to have an offset or otherwise, or which temporary restraining order was refused by the Court upon any finding that the defendants, or either of them, were not insolvent, as alleged in said original complaint, or otherwise, or at all, except as hereinafter alleged. Deny by reason of the refusal of the court to grant said or any temporary restraining order that plaintiff

was compelled to, or did, pay the entire or any judgment as set forth in the amended bill of complaint, or otherwise or at all, except as hereinafter alleged. Deny that the defendants or either of them had received by reason of the transactions aforesaid with the First National Bank of Eugene, Oregon, or by reason of any transactions with any bank the sum of $12,676.38, or any other sum of the amount for which any judgment was given them, or either of them, as alleged in the amended bill of complaint or otherwise, or at all, except as hereinafter alleged.

Deny that by reason of the matters alleged in the amended bill of complaint or otherwise, the plaintiff is entitled to have maintained as existing obligations of the defendants, or either of them, or Winchell or Hathaway, said or any promissory notes or chattel mortgage given to the First National Bank of Eugene, Oregon, or any other person, or that the plaintiff is entitled to be subrogated to any rights, claims or demands of the first National Bank of Eugene, Oregon, or any other person against the defendants, or either of them, or against Winchell or Hathaway, or either of them, or to recovery of or from the defendants, or either of them or from said Winchell or Hathaway, the sum of $12,676.38, or any sum, or of any interest thereon, or of any other amount from September 1, 1916, or any other time.

Admit that this is a controversy between citizens of different states and involves more than Three Thousand Dollars, exclusive of interest or costs.

Deny plaintiff has no plain, speedy or adequate

remedy at law, and deny that plaintiff has any remedy in equity. [117]

For a further and separate answer and defense to the amended bill of complaint herein, of the Ford Motor Company, a corporation, plaintiff, filed against these defendants, and now and at all times hereinafter saving and reserving to these defendants all manner of benefit and advantage which can or may be had or taken to the many errors, uncertainties and insufficiencies in said amended bill of complaint contained, for their answer thereto say:

I.

That on the 10th day of September, 1915, and for some time prior thereto V. W. Winchell and F. M. Hathaway were engaged in business at Eugene, Oregon, as copartners in carrying on an automobile business and garage business and automobile repair shop and in selling automobiles, automobile accessories, oils, gasoline, tires and other articles used in connection with automobiles, and the repairs thereof, and were then doing business under the firm name and style of Eugene Ford Auto Company as copartners.

II.

That on or about the 10th day of September, 1915, said Winchell and Hathaway signed a contract with the plaintiff, a copy of which is attached to the amended bill of complaint as Exhibit "A."

III.

That on or about the 25th day of May, 1915, the plaintiff undertook to give a notice to the said Winchell & Hathaway whereby the plaintiff claimed

the right to cancel the contract without complying with any of the provisions of said contract with reference to the cancellation of the same, and the plaintiff did not in fact comply with the provisions of said contract with reference to the cancellation of the same.

IV.

That on the 22d day of April, 1916, and for more than a year prior thereto the said Winchell & Hathaway did their banking business with the First National Bank of Eugene, Oregon, and during all of said times had a credit with said bank, so that [118] they were able to and did borrow various sums of money from said bank on their individual credit from time to time, and were accustomed to and did borrow from said bank on their individual credit during all of said time, and on the 22d day of April, 1916, the said bank held the promissory notes of said Winchell & Hathaway, and said Winchell & Hathway executed and delivered as individuals their certain promissory notes as follows; one note executed by V. W. Winchell and F. M. Hathway as payors in favor of the First National Bank of Eugene, Oregon, as payee, bearing date the 22d day of April, 1916, and being for the principal sum of $2,800.00, and bearing interest at the rate of 8 per cent per annum, and on which the said Winchell & Hathway had paid on the 29th day of May, 1916, the sum of $350.00. That the said V. W. Winchell and F. M. Hathway as individuals and as payors made, executed and delivered to the First National Bank of Eugene, Oregon, one note for the principal sum of $2,800.00, dated the

1st day of May, 1916, bearing 8 per cent interest in favor of the First National Bank of Eugene, Oregon, as payee, and on which note the said Winchell & Hathaway paid on the 5th day of May, 1916, $350.00 and on the 12th day of May, 1916, the further sum of $350.00, and on the 24th day of May, 1916, the further sum of $350.00. That V. W. Winchell and F. M. Hathaway, as individuals and as payors, made, executed and delivered to the First National Bank of Eugene, Oregon, their certain promissory note bearing date May 24, 1916, for the principal sum of $8,400.00, bearing interest at the rate of 8 per cent per annum in favor of the First National Bank of Eugene, Oregon, as payee. That said notes were given said bank in the ordinary course of business from the said Winchell & Hathway and represented money loaned by said bank to the said Winchell & Hathaway upon their individual credit, and not otherwise.

That on the 27th day of May, 1916, in order to secure the payment of said note of $8,400.00, said V. W. Winchell and F. M. Hathaway made, executed and delivered to the First National Bank [119] of Eugene, Oregon, a chattel mortgage covering 24 touring cars, and on or about the 2d day of June, 1916, the said V. W. Winchell and F. M. Hathaway, in order to secure to the First National Bank of Eugene, Oregon, the payment of each of the two other promissory notes hereinbefore described, made, executed and delivered to the said First National Bank, two separate chattel mortgages, each of which covered eight automobiles owned by Winchell &

Hathaway, and at the time the said Winchell & Hathaway made the three chattel mortgages hereinbefore described in favor of said bank, the said Winchell & Hathaway were the exclusive owners of each and all of the automobiles mentioned and described in said chattel mortgages, and said automobiles were fully paid for by said Winchell & Hathaway.

V.

These defendants are informed and believed and on such information and belief allege the fact to be that on or about the 10th day of June, 1916, one Goden, appeared at the First National Bank of Eugene, Oregon, and delivered to said bank the sum of $12,676.38, and requested the said bank to cancel the said notes of the said V. W. Winchell & F. M. Hathaway, and turned over to the said bank the said sum of money and made said request to said bank to cancel said notes without the knowledge or consent of either said V. W. Winchell or F. M. Hathaway, and as a mere volunteer, and not otherwise, and claimed at said time to represent the Ford Motor Company, the plaintiff herein, and the said bank accepted said sum of money and cancelled the said promissory notes and the said payment of said sum of money to said bank and the acceptance thereof by said bank constituted and was a voluntary payment to said bank and made without authority, knowledge or consent of the said V. W. Winchell or F. M. Hathaway. [120]

VI.

That on or about the 27th day of May, 1916, the plaintiff herein commenced an action at law in the

United States District Court for the District of Oregon against the said V. W. Winchell and F. M. Hathaway and others, and in said action the plaintiff in this suit was the plaintiff and the said V. W. Winchell and F. M. Hathaway and others were defendants, and said action was an action of replevin in which the said plaintiff claimed to be the owner of and claimed to be entitled to the exclusive and immediate possession of certain automobiles, and being the automobiles referred to in the amended bill of complaint herein; and the plaintiff herein, and being the plaintiff in said action, caused a writ of replevin to be issued out of said Court in said action, and placed the same in the hands of the United States Marshal for the District of Oregon, and caused the said United States Marshal by virtue of said Writ to seize and take possession of the said automobiles and to deliver the same to the plaintiff therein, and the plaintiff herein retained the same; and after the 10th day of June, 1918, and prior to the trial of said action, the plaintiff herein and being the plaintiff in said action, filed an amended bill of complaint therein, and in which said cause the said V. W. Winchell and F. M. Hathaway were defendants, and a copy of said amended complaint upon which said action was tried, as hereinbefore set forth, is attached hereto, and marked Exhibit "A" and made an integral part hereof; and to said complaint in said action said Winchell & Hathaway filed their answer, a copy of which answer is attached hereto and marked Exhibit "B" and by this reference made a part hereof; and said answer was thereafter amended

by adding allegations showing the diversity of citizenship of the parties to said cause. And to said answer, the plaintiff herein and being the plaintiff in said action on the 28th day of July, 1916, filed its reply, denying the allegations of said answer, and a copy of which reply is attached hereto and marked Exhibit "C" and by this reference made a part hereof; [121] and the said pleadings hereinbefore set forth were filed in the District Court of the United States for the District of Oregon, and constitute and were the pleadings upon which said cause was tried.

That issue was joined in said action at law, as aforesaid, and a trial was had thereon during the month of September, 1916, in the District Court of the United States for the District of Oregon, before the Judge and a jury of said court; and, as a result of said trial, a judgment was duly rendered by said Court in said action against the plaintiff, being the plaintiff in said action and the plaintiff in this suit, and in favor of said Winchell & Hathaway, on the 11th day of September, 1916, and said judgment after giving the title of said cause was in words and figures as follows, to wit:

"Thereupon on motion of said defendants for judgment on the verdict heretofore filed and entered herein,

IT IS CONSIDERED that said defendants V. W. Winchell and F. M. Hathaway, copartners, doing business as the Eugene Ford Auto Company, do have and recover of and from the plaintiff, Ford Motor Car Company, a corporation, the immediate posses-

sion and return of the Ford automobiles described in the complaint and answer herein, and being the following numbered Ford automobiles, to wit: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062282, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 10663345, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067415, Sedan 658934, 1116486.

AND IT IS FURTHER ORDERED that in case return of said automobiles cannot be had that said defendants V. W. Winchell and F. M. Hathaway, copartners, doing business as the Eugene Ford Auto Company do have and recover of and from the said plaintiff Ford Motor Car Company, a corporation, the sum of $16,077.50, the value of the said automobiles, and [122]

IT IS FURTHER CONSIDERED that said defendants V. W. Winchell and F. M. Hathaway, copartners, doing business as the Eugene Ford Auto Company, have and recover of and from the said plaintiff Ford Motor Car Company, a corporation, damages in the sum of $6,000.00 together with costs and disbursements herein taxed at $68.55.

Whereupon on motion of said plaintiff,

IT IS ORDERED that it be and it is hereby allowed thirty days from this date within which to file a motion to set aside said judgment and for a new trial herein, and in which to submit a bill of exceptions, and

IT IS FURTHER ORDERED that issuance of execution upon the said judgment be stayed until after the termination of the said motion for new trial.

R. S. BEAN,
United States District Judge.

Filed September 11, 1916. G. H. Marsh, Clerk."

VII.

That in said action the plaintiff herein, and being the plaintiff therein, called as a witness P. E. Snodgrass, who was then and there the President of the First National Bank of Eugene, Oregon, being the bank described in the amended bill of complaint herein, and the said P. E. Snodgrass as President of said bank produced the promissory notes hereinbefore mentioned, and described, and which are the identical promissory notes referred to in the amended bill of complaint herein, and which had been given by the said Winchell & Hathaway to the First National Bank of Eugene, Oregon, and said promissory notes were offered in evidence by the plaintiff herein in said action, and were received in evidence in said action with evidence claiming to show that the plaintiff herein and therein had voluntarily paid the amount due on said promissory notes amounting to $12,676.38, to said bank, and said evidence was received and admitted in said action at the trial thereof; and in said action the plaintiff therein and herein claimed that the amount so paid to the said bank, to wit, the said sum of $12,676.38 should be offset against the defenses and counterclaims [123] pleaded by the said Winchell & Hathaway in their said answer in said action; and in said action said Winchell & Hathaway offered evidence, and such evidence was

received to the effect that the said Winchell & Hathaway were the owners of the automobiles described in the pleadings in said cause, and which are the same automobiles referred to in this complaint and in the pleadings herein; and in said action evidence was given and received as to the value of said automobiles, and said Winchell & Hathaway were given and granted a judgment against the plaintiff herein for the return of said automobiles, or the value thereof, and the value thereof was fixed and determined by the judgment in said action to be the sum of $16,077.50; and in said action the said Winchell & Hathaway were given judgment against the plaintiff herein and therein for the further sum of $6,000.00 damages sustained by them on account of the wrongful taking of the said automobiles by the plaintiff therein and herein under said writ of replevin, and in said action it was duly adjudicated and determined by the judgment of said court that the plaintiff in this suit had voluntarily paid to the First National Bank of Eugene, Oregon, and as a mere volunteer only and without the authority, knowledge, consent or request of the said Winchell or Hathaway, the said sum of $12,676.38, and that said payment was made voluntarily and was a voluntary payment on the part of the plaintiff herein and therein, to said bank, and it was adjudicated and determined in said action that the plaintiff therein and herein was not entitled to offset said sum against the defenses and counterclaims pleaded in the answer of said Winchell & Hathaway in said action; and it was further duly adjudicated and determined that the said Winchell & Hathaway were the owners of and had the exclu-

sive right to the possession of the said automobiles and to the return thereof, and that they should have and recover of and from the plaintiff therein the said value of said automobiles together with said damages. [124]

VIII.

That after said judgment was rendered as aforesaid, and to wit: on or about the 8th day of November, 1916, the plaintiff, the Ford Motor Company, being the plaintiff in said action and being the plaintiff in this suit, filed a petition for a new trial or modification of said judgment in the District Court of the United States for the District of Oregon in said action, and a copy of which said petition is attached hereto and marked Exhibit "D" and made a part hereof as though the same were fully set forth herein.

That in the said motion and petition aforesaid, the plaintiff in said action and being the plaintiff in this suit, moved the District Court of the United States for the District of Oregon to offset against said judgment and particularly against the said sum of $16,077.50 awarded said Winchell & Hathaway, as aforesaid, by the judgment of said Court, the said sum of $12,676.38, and being the amount of money claimed to have been paid by the plaintiff herein and therein to the said First National Bank of Eugene, Oregon, in payment and discharge of the promissory notes referred to in the amended bill of complaint herein, and given to said bank by the said Winchell & Hathaway. And said motion and petition came on regularly to be heard in the District Court of the

United States for the District of Oregon, and said court on or about the 2d day of January, 1917, duly made and entered an order in said action denying said motion, and thereby and in the proceedings in said action hereinbefore set forth, as aforesaid, it was fully determined, adjudicated and adjudged by the said District Court of the United States for the District of Oregon, in said action wherein the plaintiff herein was the plaintiff therein, and the said Winchell & Hathaway were the defendants therein, that the plaintiff was not entitled to offset said sum of $12,676.38 or any part thereof against the defenses and counterclaims of these defendants in said action and against the said judgment rendered in said District Court of the United States for the District of Oregon in favor of the said Winchell & Hathaway and against this plaintiff, [125] and which is the judgment referred to in the amended bill of complaint herein, and which said judgment and said order denying the modification thereof is the final judgment and order of the District Court of the United States for the District of Oregon, and duly determined said action and said petition and motion.

IX.

These defendants further answering allege that the plaintiff in this suit and the plaintiff in said action of replevin hereinbefore described and referred to in the amended bill of complaint, herein, prosecuted a writ of error from the District Court of the United States for the District of Oregon in said action to the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit of the

United States; and said appeal was duly heard and determined by the said United States Circuit Court of Appeals and the said judgment of the said District Court of the United States for the District of Oregon was duly affirmed and the judgment of said Circuit Court of Appeals was duly rendered affirming the said judgment of the District Court of the United States for the District of Oregon in said action, and the opinion of the said Circuit Court of Appeals in said action was duly filed in the District Court of the United States for the District of Oregon on the 1st day of October, 1917, and in said opinion, the said Circuit Court of Appeals and upon the record presented by said writ of error prosecuted by the plaintiff in said action and upon an appeal, determined and decided that the allegation in the amended bill of complaint herein to the effect that the plaintiff in this suit was ready and willing to perform all of the conditions of the alleged cancellation of the said contract referred to in the amended bill of complaint was not true, and in said action of replevin it was claimed by this plaintiff that it had duly and legally cancelled the contract pleaded in its bill of complaint herein as Exhibit "A," and evidence was offered and received by the parties to said action of replevin as aforesaid, on the issues tendered thereon with respect to the alleged cancellation of the contract referred to as Exhibit "A" in the amended bill of [126] complaint herein, and upon said evidence it was duly adjudicated and determined in said action that the plaintiff herein and therein had not complied with the provisions of said contract with

*respect* requirements therein contained by virtue of which it claimed it was entitled to cancel the said contract, and the said matter was fully adjudicated, determined and adjudged in said action, as shown by the judgment and judgment of the Circuit Court of Appeals in said action, and which said opinion is reported in the Federal Reporter at page 85 of Vol. 245 thereof. And thereafter the said Circuit Court of Appeals duly and regularly issued its mandate in said action, which said mandate has been duly entered of record in the District Court of the United States for the District of Oregon, and the judgment thereon is of record in this said court, to wit: the District Court of the United States for the District of Oregon, and is in full force and effect. And these defendants further allege that in the prosecution of said writ of error and in the assignments of error made by the plaintiff on its said appeal from the said judgment of the District Court of the United States for the District of Oregon to the said Circuit Court of Appeals, the said plaintiff assigned as an alleged ground of error the ruling of the District Court of the United States for the District of Oregon, denying the said motion and petition of the plaintiff for a modification of said judgment by allowing as an offset the said sum of $12,676.38, but did not assign as error the ruling of the Court in the trial of said action wherein and whereby said District Court of the United States for the District of Oregon held that the said payment of the said promissory notes of the said Winchell & Hathaway made by the plaintiff herein and therein to said bank was a voluntary pay-

ment and could not be recovered by this plaintiff from said Winchell & Hathaway. And these defendants allege that by reason of the foregoing matters alleged, as aforesaid, with respect to said adjudications, these defendants plead by reason thereof, and by reason of the premises, as hereinbefore [127] set forth, that all of the matters and things pleaded in the amended bill of complaint in this suit and on account of which this suit is brought are *res adjudicata* and were fully litigated, tried, determined, adjudicated and adjudged in the District Court of the United States for the District of Oregon on the said writ of error from said court to the said Circuit Court of Appeals and in said action as aforesaid, and in a cause wherein the said courts had jurisdiction of the subject matter hereinbefore referred to and the parties to said cause and of said cause.

X.

These defendants further answering allege that the original bill of complaint herein was filed in this court in this suit against the said V. W. Winchell and F. M. Hathaway on the 25th day of February, 1918, and at said time said judgment in said replevin action had not been paid, and had not been satisfied, and the plaintiff herein in said suit alleged the same matters that are alleged in the amended bill of complaint herein, and prayed to have offset *pro tanto* against said judgment the said sum of $12,676.38, and procured a temporary restraining order in this court against the collection of the said judgment in said replevin action, and upon the motion of the said Winchell & Hathaway therein to dissolve said

temporary restraining order, this Court dissolved said temporary restraining order and refused to grant further temporary restraining order or injunction therein. And that on the 27th day of March, 1918, the plaintiff herein paid said judgment and the same was satisfied, and that no execution was levied upon the property of the plaintiff either in Portland, Oregon or elsewhere, but that the plaintiff paid said judgment and did not appeal from the order of the Court dissolving said temporary restraining order or refusing to grant a further temporary restraining order, and said payment was made by the plaintiff to procure the satisfaction [128] of said judgment and the same was duly satisfied thereby, and was and is satisfied of record and on the judgment record of the District Court of the United States for the District of Oregon.

XI.

That prior to the commencement of this suit the said V. W. Winchell and F. M. Hathaway engaged in the automobile business at Eugene, Oregon, and were so engaged in said business for about a year prior to the commencement of this suit under the firm name and style of Pacific Auto Company, and at said time had duly and regularly filed their assumed business name as copartners pursuant to the laws of the State of Oregon in such case made and provided, and that since the commencement of this suit the said V. W. Winchell, who was a defendant herein, had died, and the defendant Fannie S. Winchell as administratrix has been duly appointed the administratrix of the estate of said V. W. Winchell, deceased, by appointment of the County Court of the

State of Oregon for the county of Lane, and the said F. M. Hathaway has been duly appointed as administrator of the partnership estate of V. W. Winchell and F. M. Hathaway, copartners, and that the said Fannie S. Winchell is the duly appointed, qualified and acting administratrix of the estate of said V. W. Winchell, deceased, and the said F. M. Hathaway is the duly appointed, acting and qualified administrator of the partnership estate of V. W. Winchell and F. M. Hathaway, copartners; that the said V. W. Winchell, deceased, was the identical person referred to as a defendant in said replevin action, and his said estate is in the course of administration as aforesaid.

XII.

And that by reason of the premises and all the matters hereinbefore alleged, and the said adjudication of the said courts as hereinbefore set forth, wherein the matters and things upon which this suit is brought, as alleged in the amended bill of complaint, were heretofore brought and finally determined, adjudicated and adjudged by said courts then and there having jurisdiction [129] of the said person and of the said cause of action and of the subject matter of said action, the plaintiff is and should be held to be estopped to deny that both of the alleged causes of suit set forth in the amended bill of complaint herein have been and are *res adjudicata,* and fully determined and adjudicated heretofore and as hereinbefore set forth, and by reason of the premises, the plaintiff ought not to be heard to prosecute or maintain this suit, nor to claim any recovery against

these defendants herein on account of the matters set forth in said amended bill of complaint, and all of which were determined and adjudicated by a court of competent jurisdiction, as aforesaid.

XIII.

These defendants further allege that for more than a year prior to the 10th day of September, 1915, up to the 25th day of May, 1916, during all the time when the plaintiff and said Winchell & Hathaway dealt together with reference to Ford automobiles and including the automobiles referred to in the complaint, the plaintiff dealt with the said Winchell & Hathaway in the sale of automobiles, including the automobiles referred to in the complaint, so that the plaintiff delivered automobiles to said Winchell & Hathaway, and required the said Winchell & Hathaway to pay the plaintiff the full sum required to be paid by said Winchell & Hathaway to the plaintiff for said automobiles, and delivered the same to said Winchell & Hathaway, and the said Winchell & Hathaway paid the said price to the plaintiff and paid the freight thereon and drafts attached to bills of lading for said automobiles for the full amount required to be paid the plaintiff; and upon such payment and delivery, said Winchell & Hathaway received said automobiles and paid the full purchase price of the same, as aforesaid, and received from the plaintiff an invoice of the same marked "paid" by the plaintiff, and upon such payment and delivery said Winchell & Hathaway dealt with the said automobiles as their own [130] with the knowledge and acquiescence of the plaintiff, and no further amount

was required to be paid to the plaintiff, or was in fact ever paid, and the plaintiff gave the said Winchell & Hathaway a receipt in full for payment for said automobiles, and the said contract referred to as Exhibit "A" in the amended bill of complaint between plaintiff and said Winchell & Hathaway ever since the same was made was construed by the parties so that upon the payment of said invoices and sight drafts and the delivery of the automobiles upon the payment of the same and the freight, delivery and title to such automobiles was complete and passed from the plaintiff to said Winchell & Hathaway; and said contract was so construed during all of said times between the plaintiff and said Winchell & Hathaway so that all of the automobiles delivered by the plaintiff to said Winchell & Hathaway, including those mentioned in the amended bill of complaint herein, were purchased from the plaintiff and paid for by said Winchell & Hathaway, and title thereto passed to said Winchell & Hathaway, and said Winchell & Hathaway became and were the exclusive owners of said automobiles and each and every one of the same and no further sums remained to be paid said plaintiff for the said automobiles, or any of them, and the said Winchell & Hathaway claimed to be the exclusive owners thereof with the knowledge, acquiescence and consent of the plaintiff, and dealt with said automobiles as their own. And the foregoing facts were pleaded in the answer of the said Winchell & Hathaway to the replevin action brought by the plaintiff referred to in the amended bill of complaint herein and hereinbefore referred

to, and evidence to support said defense to said action in replevin was offered and received by said Winchell & Hathaway at the trial of said action without objection, and by the judgment hereinbefore set forth in said action, the said issue with reference to the ownership of said automobiles was fully adjudicated and determined, and is *res adjudicata* as between the plaintiffs and these defendants, and the plaintiff ought not to be heard or to claim that the automobiles referred to in the amended bill of complaint were consigned to said Winchell & Hathaway, and ought not to be heard to deny [131] that the said Winchell & Hathaway were the sole and exclusive owners of the same, and had the right to execute the mortgages referred to in the amended bill of complaint and hereinbefore described, and ought not to be heard to say or allege that any claim of subrogation on account of the allegations set forth in the amended bill of complaint herein, and ought not to be heard to say that it had any interest in said automobiles when the same were mortgaged to the First National Bank of Eugene, Oregon, and is and should be held to be estopped to deny that the said Winchell & Hathaway were the sole and exclusive owners of said automobiles when the same were mortgaged by them to the First National Bank of Eugene, Oregon, and are and should be held to be estopped to deny that the plaintiff had no interest in said automobiles at said time, and by reason of the premises, the said issues tendered in the amended bill of complaint herein were heretofore adjudicated fully and *fully* determined by the said District Court of the United States for the District of Oregon in the said action

hereinbefore described in which said action said issue as to the ownership of said automobiles was tendered and tried and determined in said action between the said parties in said court in said proceeding in which the said court had jurisdiction of the parties and the subject matter of said action, and fully and finally determined the same by the final judgment of said court wherein said issues became finally, fully and completely determined and adjudicated, and constitute and are *res adjudicata* between the plaintiff and these defendants.

For a further and separate answer and defense and counterclaim to the amended bill of complaint, these defendants allege:

I.

That V. W. Winchell & F. M. Hathaway mentioned in the amended bill of complaint were copartners doing business under the name and style of Eugene Ford Auto Company at the time they signed the said instrument designated as Exhibit "A" in the amended bill of complaint herein. [132]

II.

That at the time of executing said instrument designated as Exhibit "A" in the amended bill of complaint herein, the said Winchell & Hathaway as such copartners, delivered to the plaintiff the sum of Eight Hundred Dollars, which the plaintiff required said Winchell & Hathaway to deposit with the plaintiff at the time defendant signed said instrument, Exhibit "A"; and the plaintiff in consideration thereof promised and agreed to repay said sum of $800.00 to the said Winchell & Hathaway at the

conclusion of one year from the date of said instrument, the said instrument providing for the delivery of Ford automobiles to the defendants during the period of one year from the date thereof, and by the terms of said agreement for the deposit of said $800.00, with said plaintiff by said Winchell & Hathaway, the same became due and owing from the plaintiff to the said Winchell & Hathaway when the plaintiff repudiated the said instrument and undertook to terminate the same on the 25th day of May, 1916. And these defendants further allege that on said 25th day of May, 1916, the plaintiff herein notified said Winchell & Hathaway that it would be no longer bound by the provisions of said instrument, Exhibit "A," and repudiated the same without complying with any of the conditions set forth therein required by it to be performed to procure a cancellation or termination of the same, and that the plaintiff then and there failed and neglected, and ever since said date has failed, neglected and refused to pay the said Winchell & Hathaway, or these defendants the said sum of $800.00 and thereby there became due and owing from the plaintiff to said Winchell & Hathaway the said sum of $800.00, with interest thereon at the rate of 6 per cent per annum from the 25th day of May, 1916.

III.

That since the commencement of this suit the said V. W. Winchell died, and the defendant F. M. Hathaway was duly appointed administrator of the partnership estate of V. W. Winchell and F. M. Hathaway as copartners, and is the duly appointed,

acting [133] and qualified administrator of said copartnership estate; and the defendant Fannie S. Winchell is the duly appointed administratrix of the estate of said V. W. Winchell, deceased, and both said administratrix and administrator were duly appointed as such by the County Court of Lane County, Oregon, and the plaintiff is indebted to these defendants in said sum of $800.00 with interest at the rate of 6 per cent per annum from the said 25th day of May, 1916, no part of which has been paid.

For a second further and separate answer, defense and counterclaim against the plaintiff, these defendants allege the facts to be:

I.

That between the 10th day of September, 1915, and the 25th day of May, 1916, the said V. W. Winchell and F. M. Hathaway were copartners doing business under the firm name and style of Eugene Ford Auto Company and as Winchell & Hathaway, and as such signed the instrument designated as Exhibit "A" and attached to the amended bill of complaint as such exhibit; and during such time purchased from the plaintiff upwards of 179 Ford automobiles and paid for the same to the plaintiff, and the plaintiff agreed and was bound to pay the said Winchell & Hathaway rebates depending upon the volume of business done between the plaintiff and said Winchell & Hathaway, and on the said 25th day of May, 1916, referred to in said amended bill of complaint, said rebates amounted to the sum of $1,900.60, which said Winchell & Hathaway were entitled to receive from the said plaintiff; and the provision for the

said rebates is fully set forth in said instrument Exhibit "A," attached to plaintiff's amended bill of complaint herein. That the plaintiff failed and neglected to pay the said rebates amounting to the said sum of $1,900.60 or any part thereof, and ever since said 25th day of May, 1916, has failed, neglected and refused to pay the same, or any part thereof, and the same became due and owing from the plaintiff to said Winchell & Hathaway on said 25th day of May, 1916, and no part of the same has been paid. [134]

II.

That the said V. W. Winchell died since the commencement of this suit at Eugene, in Lane County, Oregon, and the defendant F. M. Hathaway was duly appointed administrator of the partnership estate of said Winchell & Hathaway by the County Court of Lane County, Oregon, and is now the duly appointed, acting and qualified administrator of said copartnership estate; and the said defendant Fannie S. Winchell, is the duly appointed, acting and qualified administratrix of the personal estate of said V. W. Winchell, deceased, and that these defendants are entitled to recover the said sum of $1,900.60 (Nineteen Hundred Dollars and Sixty Cents) from the plaintiff with interest thereon from the 25th day of May, 1916.

WHEREFORE, these defendants not confessing or admitting that any matter, cause or thing in said amended bill of complaint contained and not hereby sufficiently answered is true, deny that the plaintiff and complainant is entitled to any relief against

them by reason of any matter in said amended bill of complaint contained, and pray to be hence dismissed with their costs in this behalf sustained; and that they have and recover judgment against the plaintiff for the sum of $800.00 with interest thereon at the rate of six per cent per annum from the 25th day of May, 1916, and the further sum of $1900.60, with interest thereon at the rate of six per cent per annum from the 25th day of May, 1916, together with their costs and disbursements herein to be taxed.

CHARLES A. HARDY,
ISHAM N. SMITH,
Attorneys for Defendants. [135]

**Exhibit "A" to Answer to Amended Bill of Complaint.**

(Omitting Title.)

AMENDED COMPLAINT.

Plaintiff complains and for cause of action alleges:

I.

That it is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Michigan, with its factory and principal place of business at Highland Park, Michigan, and duly authorized to transact business as a foreign corporation in the State of Oregon, with a factory branch and principal place of business in the State of Oregon in Portland, Multnomah County, Oregon.

II.

That E. A. Farrington and L. A. Houck are copartners doing business under the firm name and style of Pacific Transfer Company, and are engaged

in the warehouse and transfer business at the city of Eugene, Oregon.

III.

That H. Sandgathe is an individual doing business as the Springfield Garage, and is in the automobile business at Springfield, Oregon.

IV.

That V. W. Winchell and F. M. Hathaway are co-partners doing business as the Eugene Ford Auto Company, and are in the automobile business at Eugene, Oregon.

V.

That A. Wilhelm and John Doe Wilhelm are co-partners doing business as A. Wilhelm & Son, and are in the automobile business at Junction City, Oregon.

VI.

That heretofore and on, or about September 10th, 1915, plaintiff and defendants V. W. Winchell and F. M. Hathaway entered into a contract whereby said defendants were to represent the plaintiff as limited agents. Pursuant to said contract plaintiff [136] consigned to the said defendants in this paragraph mentioned the following number Ford automobiles: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062282, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066343, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1067115 10088770, 1079019, 1079020, 1067411, 1068781, Sedan 658934, 1116486.

VII.

That thereafter plaintiff, pursuant to the terms of said contract with the defendants mentioned in the last preceding paragraph, duly canceled said contract and offered $16,077.50, the money advanced on said consignment of automobiles by the above mentioned defendants to said defendants in payment and satisfaction as provided for in said contract, and that defendants then refused and ever since have refused to receive the same; that the plaintiff was at the time of said tender ready and willing and able to pay said amount thereof to the defendants, and that since said offer plaintiff has been ready, willing and able to pay the sum of Thirty-four Hundred and One and 12/100 Dollars ($3401.12) which amount is the defendants' Winchell and Hathaway, property in said cars at this time, and that plaintiff now brings said sum of Thirty-four Hundred and One and 12/100 Dollars into this court in this action, ready to be paid to defendants.

VIII.

That the amount involved in this action is in excess of three thousand dollars, and within the jurisdiction of this Court.

IX.

That at the time of the commencement of this action said automobiles above described are within the State of Oregon and the jurisdiction of this Court, and in the possession of the defendants herein; and that the plaintiff is the present owner and entitled to the immediate possession of said automobiles; that demand has been made upon the defendants for

the possession of said automobiles and defendants have refused to give plaintiffs possession of said automobiles. [137]

X.

That said automobiles are of the value of Sixteen Thousand Seventy-seven and 50/100 Dollars ($16,077.50).

Wherefore plaintiff demands judgment against the defendants for the recovery of Ford automobiles as particularly set forth in Paragraph VI of this complaint, or for $16,077.50, the value thereof; $1,000.00 damages for the detention thereof; and for the costs and disbursements of this action.

E. L. McDOUGAL,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, E. L. McDougal, being first duly sworn, depose and say that I am the plaintiff's attorney in the above-entitled action, and that the foregoing proposed amended answer is true as I verily believe; and that I make this verification because the attorney in fact is without the state and I am acquainted with the facts.

(Sgd.) E. L. McDOUGAL.

Subscribed and sworn to before me this 14th day of August, 1916.

(Sgd.) HOMER T. SHAVER,
Notary Public for Oregon.

My commission expires July 19, 1920.

Filed August 14, 1916. G. H. Marsh, Clerk. [138]

**Exhibit "B" to Answer to Amended Bill of Complaint.**

(Omitting Title.)

ANSWER.

Comes now the defendants and answering the complaint herein admit the allegations contained in Paragraph I, in Paragraph II, in Paragraph III, in Paragraph IV, and in Paragraph V of the complaint herein.

Deny each and every other allegation contained in said complaint except as hereinafter expressely admitted, and except as hereinafter alleged.

For a further and separate answer and defense to said complaint these defendants allege and V. W. Winchell and F. M. Hathaway prior to the time of the commencement of this action had purchased all the Ford automobiles described in said complaint and had paid the plaintiff the full purchase price required to be paid from them to plaintiff, and no further payments were to be made thereon; and thereupon, the plaintiff delivered said automobiles to defendants and title to the same passed from plaintiff to defendants, and defendants became the owners thereof, and prior to the time of the commencement of this action, and at the time of the commencement thereof, were and are now the owners thereof, and entitled to the immediate and exclusive possession of the said automobiles.

For a further and separate answer and defense to said complaint the defendants V. W. Winchell and F. M. Hathaway reallege all of the allegations con-

tained in the first answer contained herein, and these defendants further allege that ever since the contract mentioned in the complaint was made between plaintiff and these defendants, plaintiff has dealt with these defendants in the sale of automobiles, so that when the defendants paid to plaintiff the amount required to take up the bill of lading sent for collection by the plaintiff with the automobiles delivered by plaintiff to defendants, and paid the freight and draft attached to such bill of lading delivery was made of said automobiles to defendants [139] and such drafts were drawn by plaintiff against defendants for the full sum required to be paid by defendants to plaintiff as the purchase price of said automobiles, and upon such payment and delivery *plaintiffs* have received said automobiles and dealt with the same as their own, with the knowledge and acquiescence of plaintiff; and the contract between plaintiff and defendants ever since the same was made has been construed by the parties, the same being the contract under which plaintiff sold and defendants purchased the said automobiles, so that upon payment of such sight drafts and delivery of the automobiles upon the payment of the same and the freight, title and delivery to such automobiles were completed and passed from plaintiff to defendants and that all of the automobiles mentioned in the complaint were purchased from plaintiff and paid for by defendants upon the terms hereinafter set forth; and long prior to the institution of this action, and not otherwise; and that at the time of the commencement of this action and for a long time prior

thereto defendants were and are the exclusive owners of said automobiles and each one of the same and entitled to the immediate and exclusive possession thereof, and were in the lawful possession thereof at the time of the commencement of this action.

For a third further and separate answer and defense these defendants allege the truth to be: That prior to the commencement of this action and on or about the 29th day of May, 1916, the plaintiff and the defendants V. W. Winchell and F. M. Hathaway had a settlement of the contract existing between plaintiff and defendants wherein and whereby the plaintiff and defendants adjusted their mutual accounts and reciprocal claims, and wherein and whereby the plaintiff agreed that the defendants were the owners of and did convey to defendants V. W. Winchell and F. M. Hathaway all claims of title on the part of plaintiff to the automobiles described in the complaint and each and every one thereof, and relinquished every claim of possession to the said automobiles and [140] each and every one thereof.

For a fourth further and separate answer and defense and counterclaim the defendants V. W. Winchell and F. M. Hathaway allege that during all the times mentioned herein they were, and now are, copartners doing business under the firm name and style of Eugene Ford Auto Company, and had duly registered their assumed business name with the County Clerk of Lane County, Oregon, and were engaged in a general automobile business in Lane County, Oregon, and engaged in buying and selling Ford automobiles, parts, fixtures, accessories, sup-

plies and materials used in said business and incident thereto.

That at the time of the commencement of this action these defendants were, and are now, the owners of the Ford automobiles mentioned in the complaint and being automobiles numbered and specifically designated in Paragraph VI of the complaint and being Ford automobiles: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062232, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066345, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067415, sedan 658934, 1116486.

That said automobiles were and are of the value of $493.25 for each of said cars, except for the sedan which was and is of the value of $798.25.

That the defendants at the time of the commencement of this action, as such owners of said automobiles, were entitled to the immediate and exclusive possession of the same; and on or about Monday, the 5th day of June, 1916, the plaintiff instituted the above cause and wrongfully and unlawfully and maliciously caused the writ of replevin to be issued out of this court and filed an affidavit and bond thereon and demanded the immediate possession of the said automobiles; and at the said time the plaintiff well knew that said automobiles and each and every one thereof, were the exclusive property of these answering defendants, V. W. Winchell and [141] F. M. Hathaway; and that said defendants were entitled to the immediate and exclusive posses-

sion thereof, and plaintiff caused said writ of replevin to be issued herein and the said automobiles to be seized maliciously, wrongfully and unlawfully for the purpose of destroying the business of these defendants and injuring their financial standing and credit and depriving them of said property of the value of $18,555.25, as aforesaid, and to drive them out of business and to prevent them from conducting their automobile and garage business hereinbefore described.

That at said time these defendants had an established business in dealing in automobile accessories, appurtenances and supplies from which they were then making and had been making for several months last past a regular profit of approximately Three Hundred Dollars per month.

That by the wrongful acts of the plaintiff, as herein alleged, the business of these defendants has been destroyed, their business credit ruined, their standing in the mercantile world has been discredited and they have been injured and damaged by the malicious acts of defendants as alleged, to the sum of twenty-five thousand dollars, in addition to the general damages hereinbefore set forth, to wit: Value of the automobiles and the property aggregating $18,555.25.

That the plaintiff is a corporation of great wealth and extensive business associations and power in the commercial world and in committing the acts herein set forth, it has used its wealth, standing and power to harass and annoy these defendants by the issuance of legal process to which plaintiff knew it was not entitled.

WHEREFORE defendants demand judgment that the defendants V. W. Winchell and F. M. Hathaway have judgment against the plaintiffs for the recovery of the Ford automobiles, as particularly set forth in the answer herein, or for $18,555.25, the value thereof; and for Twenty-five Thousand dollars damages; and for their costs and disbursements in this action.

I. N. SMITH,
L. BILYEU and
THOMPSON and HARDY,
Attorneys for Defendants. [142]

State of Oregon,
County of Lane,—ss.

I, V. W. Winchell, being first duly sworn, depose and say that I am one of the defendants in the above-entitled action; and that the foregoing answer is true, as I verily believe.

V. W. WINCHELL.

Subscribed and sworn to before me this 13th day of June, 1916.

[Notarial Seal]

HELMUS W. THOMPSON,
Notary Public for the State of Oregon.

My commission expires March 27, 1917.

Filed June 14, 1916. G. H. Marsh. [143]

**Exhibit "C" to Answer to Amended Bill of Complaint.**

(Omitting Title.)

REPLY.

Comes now the plaintiff, Ford Motor Company, a

corporation, and for reply to the first further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained, which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff replying to the second further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff replying to the third further and separate answer and defense of the defendants denies the same, and the whole thereof, except as to the matters therein contained, which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff replying to the fourth further and separate answer and defense of the defendants, denies the same and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

WHEREFORE, plaintiff having fully replied to the further and separate answers and defenses of the defendants prays judgment as heretofore asked for in the complaint on file herein.

E. L. McDOUGAL,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, E. L. McDougal, being first duly sworn, depose and say that I am the attorney for plaintiff corporation in the above-entitled action, and that the foregoing reply is true, as I verily believe. I further

state that I have personal knowledge of the facts herein contained, and verify this reply for the reason that the proper officer for service of this corporation is not now within the state.

(Sgd.) E. L. McDOUGAL.

Subscribed and sworn to before me this 28th day of July, 1916.

(Sgd.) F. C. McDOUGAL,
Notary Public for Oregon.

My commission expires July 1, 1920. [144]

**Exhibit "D" to Answer to Amended Bill of Complaint.**

(Omitting title.)

Comes now the plaintiff in the above-entitled action appearing by Messrs. Platt and Platt and E. L. McDougal, its attorneys of record, and petitions the Court for a new trial in the above-entitled action, and for grounds of such petition alleges:

I.

That it appears from the undisputed testimony introduced upon the trial of the above-entitled cause that the plaintiff was compelled to and did pay to the First National Bank of Eugene, Oregon, three notes of the defendants, V. W. Winchell and F. M. Hathaway, aggregating the sum of $12,676.38, each of which notes was secured by a chattel mortgage on the automobiles sought to be recovered from the possession of the defendants in the above-entitled action, which notes the plaintiff was compelled to pay and did pay in order to free the automobiles in controversy from the liens of the chattel mortgages given to secure said notes, in order to enable it to

maintain an action for the replevin of said automobiles, and the Court failed and refused to instruct the jury at the trial of the above-entitled action that the plaintiff was entitled to offset the amounts paid in satisfaction of said notes against any amounts which they might find in favor of the defendants, and against the plaintiff.

II.

Plaintiff petitions for a new trial in the above-entitled action upon the further ground that the verdict of the jury made and entered in the above-entitled action, and the judgment entered thereon contravenes the instructions given by the Court upon the trial of the above-entitled cause in that it allows to the defendants as damages profits on the sales of automobiles in addition to the value of the cars therein and thereby expressly fixed at the sum of $16,077.50, and said judgment is contrary to the evidence introduced upon the trial of the above-entitled cause in that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause and the law applicable to the facts proven as evidenced by the instructions of the Court made upon the trial [145] of the above-entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants, V. W. Winchell and F. M. Hathaway, prior to the institution of the above-entitled action and the defendants are not entitled to any damages arising from the action of the plaintiff in terminating its contract or in asserting its rights to the possession of the automobiles in controversy and that no evidence was introduced

upon the trial of the above-entitled cause upon which any claims for damages for the sum of $6,000.00 or any sum in excess of $2414.75 could properly be based, and said verdict and judgment are contrary to the evidence introduced upon the trial of the above-entitled cause, and that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the defendants, V. W. Winchell and F. M. Hathaway, had sold their business to a third party at or about the time of the cancellation of their contract with the plaintiff in the above-entitled cause and received for such transfer a valuable consideration.

III.

That the verdict rendered against the plaintiff in the above-entitled cause is contrary to and against the weight of evidence introduced upon the trial of the above-entitled cause.

IV.

Plaintiff further petitions the Court for an order modifying the judgment entered in the above-entitled cause on the —— day of September, 1916, by offsetting against the sum of $16,077.50 therein awarded to the defendants in lieu of the machines sought to be replevined in the above-entitled action the sum of $12,676.38, being the amount of money paid by the plaintiff to the First National Bank of Eugene, Oregon, for the benefit of and in payment and discharge of the three notes of the defendants, V. W. Winchell and F. M. Hathaway, given to the First National Bank of Eugene, Oregon, as payee, each of which said notes were secured by a chattel

mortgage upon the automobiles sought to be replevined in the above-entitled action, which facts appear from the undisputed [146] evidence introduced upon the trial of the above-entitled cause, and for the grounds of such petition alleges that the plaintiff was compelled to and did pay the said notes of the defendants, V. W. Winchell and F. M. Hathaway, the first note being in the sum of $2,800.00 bearing date April 22d, 1916; the second note being in the sum of $2,800.00 bearing date May 1st, 1916, and the third note being in the sum of $8,400.00, bearing date May 24th, 1915, each of which notes was secured by a chattel mortgage upon the property sought to be replevined in the above-entitled action, in order to free the property involved in the above-entitled cause from the liens of said mortgages prior to the institution of its action for the replevin of said automobiles.

V.

Plaintiff further petitions for an order of this Court modifying the judgment heretofore entered in the above-entitled cause on the —— day of September, 1916, by striking therefrom the sum of $6,000.00 allowed to the defendants as damages on account of the alleged erroneous action of the plaintiff in taking possession of the automobiles involved in the above-entitled controversy upon the grounds and for the reason that such is not a proper item of damage, because it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants V. W. Win-

chell and F. M. Hathaway, prior to the institution of the above-entitled action, and the defendants are, therefore, not entitled to any damages arising from the action of the plaintiff in asserting its rights to the possession of the automobiles in controversy and its termination of its contract with the defendants V. W. Winchell and F. M. Hathaway, and that no evidence was issued upon the trial of the above-entitled cause upon which any claim or judgment for damages in the sum of $6,000 could properly be based, and that such allowance of $6,000 for damages or any other sum in excess of $2,414.75 is in contravention of the instructions of the Court directing the jury that they should [147] not allow the value of the machines in controversy and at the same time allow any claim for loss of profits arising from an inability to sell said automobiles, and upon the further grounds that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the business of the defendants, V. W. Winchell and F. M. Hathaway, had been sold to a third party at or about the time of the cancellation of the said defendants' contract with the plaintiff in the above-entitled action, and said defendants received therefor a valuable consideration.

PLATT & PLATT and
E. L. McDOUGAL,
Attorneys for Plaintiff.

Filed 8th day of November, 1916. G. H. Marsh.

State of Oregon,
County of Lane,—ss.

I, F. M. Hathaway being first duly sworn depose

and say that I am one of the defendants in the above-entitled suit; and that I have read the foregoing answer and know the contents thereof, and that the same is true, as I verily believe.

F. M. HATHAWAY.

Subscribed and sworn to before me this 18th day of January, 1919.

[Seal] CHARLES A. HARDY,
Notary Public for Oregon.

My commission expires March 19, 1921.

I hereby accept service of the foregoing answer by the receipt of a copy thereof duly certified as a true and correct copy of the original by Charles A. Hardy of attorneys for the defendants therein.

Dated at Portland, Oregon, this 23d day of January, 1919.

ROBERT TREAT PLATT,
Of Plaintiff's Attorneys.

[Endorsed]: Filed Jan. 24, 1919. G. H. Marsh. [148]

AND AFTERWARDS, to wit, on the 18th day of July, 1919, there was duly filed in said court a reply, in words and figures as follows, to wit: [149]

*In the District Court of the United States in and for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

V. W. WINCHELL and F. M. HATHAWAY, Co-partners, Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Reply.**

COMES NOW, the plaintiff above named and for its reply to the counterclaims set forth in defendants' second further and separate answer and defense, denies, admits and alleges as follows:

I.

Admits paragraph 1, page 29 of said answer.

II.

Admits that at the time of executing said instrument designated Exhibit "A" in the amended bill of complaint, the said Winchell and Hathaway delivered to the plaintiff $800.00 and denies that plaintiff promised to repay said $800.00 at the conclusion of one year from the date of the contract, and alleges it was agreed between the parties that said $800.00 might be retained by the plaintiff to satisfy legitimate claims against the defendants, and also as

security for the fulfillment of the terms of the contract, and the defendants have not fulfilled the terms of said contract, and the plaintiff denies that it cancelled said contract without complying with its terms and conditions, and denies that there is now due and owing from the plaintiff to the defendants the sum of $800.00 or any sum.

III.

Answering Paragraph III, page 30 of said answer, the plaintiff denies that it is indebted to the defendants in the sum of $800.00, or any other sum, and admits the other [150] allegations contained in said paragraph.

Plaintiff for its reply to defendants' second further and separate answer and defense, and the counterclaim therein contained, denies, admits and alleges as follows:

I.

Plaintiff denies that the defendants purchased upwards of 179 automobiles, and alleges that defendants purchased only 105 automobiles, and denies that the rebates amounted to $1900.60, or any sum greater than $1,338.10, and denies that there is due and owing from the plaintiff to the defendants the sum of $1900.60 or $1338.10, or any other sum or sums, or that the plaintiff has failed and neglected to pay the same.

II.

Answering Paragraph II, page 31 of said answer, plaintiff denies that the defendants are entitled to recover from the plaintiff the sum of $1900.60, or any other sum or sums, and admits the other alle-

gations in said paragraph contained.

WHEREFORE plaintiff prays for a decree as set forth in the prayer of its amended bill of complaint.

PLATT & PLATT,
Solicitors for Plaintiff.

HUGH MONTGOMERY,
Of Counsel.

[Endorsed]: Filed July 18, 1919. G. H. Marsh.

I, Hugh Montgomery, being first duly sworn, depose and say that I am one of the solicitors for the plaintiff and that the plaintiff is a foreign corporation and its resident manager is not within the state and district of Oregon, and that the allegations of this reply are based upon records and that the foregoing reply is true as I verily believe.

HUGH MONTGOMERY.

Subscribed and sworn to before me this 18th day of July, 1919.

[Seal] C. G. BUCKINGHAM,
Notary Public for Oregon.

My commission expires ——. [151]

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AND AFTERWARDS, to wit, on Monday, the 28th day of July, 1919, the same being the 19th Judicial day of the regular July term of said court—Present the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [157]

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners Formerly Doing Business under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Decree.**

This cause came on to be heard at this term, plaintiff appearing by Mr. Hugh Montgomery, of the firm of Platt & Platt, solicitors of record for the plaintiff, and defendants appearing by Messrs. Charles A. Hardy and I. N. Smith, solicitors of record for the defendants, and after testimony submitted, the cause was argued by counsel, and, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That plaintiff recover of and from the defendants, and each of them, and have judgment and decree for the sum of Twelve Thousand Six Hundred Seventy-six Dollars and Thirty-eight Cents ($12,676.38) with legal interest thereon from June 10,

1916, interest amounting, this 28th day of July, 1919, to Two Thousand Three Hundred Eighty-three Dollars and Nine Cents ($2383.09), or a total, principal and interest of Fifteen Thousand Fifty-nine Dollars and Forty-seven Cents ($15,059.47) against which there should be credited the sums of Eight Hundred Dollars ($800) and Thirteen Hundred Thirty-eight Dollars and Ten Cents ($1338.10), amounting to Two Thousand One Hundred Thirty-eight Dollars and Ten Cents ($2138.10), with legal interest thereon from May 25, 1916, interest amounting, this 28th day of July, 1919, to Four Hundred Seven Dollars and [158] Twenty-nine Cents ($407.29), or a total, principal and interest, of Two Thousand Five Hundred Forty-five Dollars and Thirty-nine Cents ($2545.39), leaving the net amount of the judgment and decree herein in favor of plaintiff and against the defendants and each of them, after all setoffs, the sum of Twelve Thousand Five Hundred Fourteen Dollars and Eight Cents ($12,514.08) together with legal interest thereon from July 28, 1919, for which judgment and decree is hereby directed to be docketed, together with plaintiff's costs, hereby taxed and allowed, in the sum of —— ($——), and that execution issue therefor.

R. S. BEAN,
Judge.

Dated at Portland, Oregon, this 28th day of July, 1919.

[Endorsed]: Filed July 28, 1919. G. H. Marsh, Clerk. [159]

AND AFTERWARDS, to wit, on the 4th day of August, 1919, there was duly filed in said court, a petition for rehearing and objections to decree, in words and figures as follows, to wit: [160]

*In the District Court of the United States for the District of Oregon.*

ORIGINAL.

No. 2932.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners Formerly Doing Business under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Motion for Rehearing and Reargument, Also Objections to Decree.**

The defendants F. M. Hathaway and Fannie S. Winchell, as Administratrix, etc., by their solicitors, Charles A. Hardy and I. M. Smith, respectfully move for a rehearing and reargument in the above cause, upon the grounds hereafter set forth and spe-

cify such grounds as their objections to the findings and decree heretofore rendered, to wit:

I.

In the opinion, the Court says:

> "The right of the plaintiff by reason of such payment was not at issue in the replevin action and was not and could not have been tried therein, etc.

The replevin action was tried upon amended pleadings. In Paragraph VII of the amended complaint, which was filed by leave of Court pursuant to application by the Ford Motor Company, which application was as follows:

(Title of Original Cause.)

> "Comes now the plaintiff in the above-entitled action and moves the Court for an order allowing it to [161] amend its complaint on file herein by pleading the tender in paragraph VII of said complaint, copy of the amended complaint desired being attached hereto and made a part of this motion."

the Ford Motor Company made the following allegation:

"VIII.

> "That thereafter plaintiff, pursuant to the terms of said contract with the defendants mentioned in the last preceding paragraph, duly cancelled said contract and offered $16,077.50, the money advanced on said consignment of automobiles by the above mentioned defendants to said defendants in payment and satisfaction as provided for in said contract, and that de-

fendants then refused and ever since have refused to receive the same; that the plaintiff was at the time of said tender ready and willing and able to pay said amount thereof to the defendants, and that since said offer plaintiff has been ready, willing and able to pay the sum of Thirty-four hundred and one and 12/100 dollars ($3401.12), which amount is the defendants', Winchell and Hathaway, advances in said cars at this time and that plaintiff now brings the said sum of Thirty-four hundred and one and 12/100 dollars into this court in this action ready to be paid to defendants."

In support of this allegation the Ford Motor Company offered its proof of the payment to the bank of the sum in dispute, which added to the amount specified in Paragraph VII as tendered into court, made up the entire Sixteen Thousand Dollars, or 85 per cent of the purchase price of the automobiles involved.

We therefore urge that the specific payment to the bank was actually involved in the trial of the replevin case, and that the ruling thereon, holding such payment to be voluntary, was necessarily adjudged in the trial and subsequent proceedings had in that case by motion and on appeal, as shown by the record.

II.

But whether the payment of the sum to the bank was actually litigated or not, it should have been and could have been so litigated in the replevin case.

By the amendment to the Practice Act heretofore quoted, parties litigant are required to set forth in

an action [162] at law of their rights for adjudication, whether such rights be legal or equitable or both. The plaintiff files a complaint and a reply, in either of which any right, either legal or equitable, which relates to, depends upon, arises from or is connected with, the subject matter or the transaction or the contract involved in the action, is necessarily required to be set forth; the defendant may file his answer and is required to set forth all of his rights, both defensive and affirmative, whether legal or equitable, which likewise relate to, are connected with, arise from or depend upon the transaction or contract involved; and if the defendant sets forth an affirmative right in the answer, the plaintiff must reply thereto and must also set forth in the reply such other affirmative matter as the plaintiff may have against the new matter in the answer. To this new matter in the reply of the plaintiff the defendant is required to file a replication.

The procedure, therefore is broader than the reformed procedure adopted in any of the states. In no state under the reformed procedure is there any such provision as that under the United States practice, which permits the defendant to obtain affirmative relief in the replication to the reply.

We therefore urge,

(a) That the question of tender was necessarily involved in the replevin case;

(b) In the absence of the tender before suit, all equities, if any, which would excuse or supplement the tender, or show any right in plaintiff to explain

the absence of such tender, were and necessarily are involved;

(c) Because the plaintiff claims an equity arising out of the payment to the bank, and because it was necessary under the contract for the plaintiff to tender to the defendant the full 85% advanced, it is urged that the replevin case actually involved either the tender or, in its absence, facts excusing the tender, and in either event took all rights, both legal or equitable, relating to the tender or its excuse. [163]

In this connection we believe that the effect of the adoption of the reformed practice in the pleadings by permitting equitable practice to be engrafted upon the law side of the court, is to change the nature of the investigation at law, converting it into an equitable proceeding in all cases, instead of one purely legal, as heretofore. That is to say one of the principal distinctions on matters of procedure between actions and suits is,

In actions the legal rights are determined as of the date the case is instituted; whereas in suits the equitable rights are adjudged as of the date of trial.

At bar the plaintiff alleged the tender in the original complaint, and thereafter, by leave of court, filed an amended pleading to set forth more particularly its basis of tender, and paid into court $3401.12, which, added to the sum of money paid to the bank aggregated $16,037.50 (the amount set forth in paragraph VII of the amended complaint), or the entire

85% of the full purchase price paid for the cars involved.

III.

In addition to the issues framed by the amended complaint and the denials thereof, the defendant affirmatively alleged title and ownership of the cars in them. This necessarily involved the acquisition of title, as the defendants claimed that such title was acquired by full payment for the cars. Upon this question the plaintiff's contract and the plaintiff's right and duty of tender, involving its excuses for nontender and equities arising out of the payment to the bank, were all involved. The defendants asserted that by the payment of the sum which we have spoken of heretofore as 85% of the purchase price, the title passed to them. [164]

At the trial of the replevin case they contended, and still assert, that the following facts determine their rights as owners of the cars:

(a) The sum paid the Ford Motor Company, though termed an 85% payment, was and is a payment in full to that company of its entire interest in the cars.

(b) The remaining 15% of the retail sale price was the property of the defendants and not the plaintiff.

(c) By the course of business, the giving of receipts, the making and payment of sight drafts, etc., the parties placed a practical construction on their mutual dealings, which showed that they treated the 85% payment as an extinction of this plaintiff's rights, and that the Ford Company executed and delivered receipts in full, which were in evidence.

(d) The verdict awarded to these defendants the cars or their value, together with damages for the wrongful taking and detention.

Now, by Paragraph VII of the amended complaint the Ford Company pleaded either a legal or equitable tender of the entire $16,077.50. The Court ruled as heretofore shown, and because the question was submitted to the Court for determination, the Ford Motor Company should have reviewed it upon appeal. The Court certainly had power to rule upon the admissibility of the evidence to prove the issue tendered; that ruling was either right or wrong, but whether right or wrong, it was necessarily involved as part of the old trial, and the position of the Court in excluding the evidence because the payment was voluntary, became and is, *res adjudicata* in absence of reversal.

We therefore urge that the question of tender or excuse for tender or equities arising out of either tender or its excuse as well as the question of title, were necessarily involved in the replevin case. In the opinion the Court says:

> "The right of the plaintiff by reason of such payment was not at issue in the replevin action and was not and could not have been tried therein," etc.

But with the pleadings and this record in the condition [165] above shown, the defendants respectfully urge that the matter was placed in issue by the amended complaint at Paragraph VII, and the denial thereof, and was again placed in issue by the claim of ownership and right to possession in the answer,

and that upon the original trial the question of whether this payment was voluntary or otherwise was directly involved.

While this cleancut theory of the Court would formerly apply in all cases so long as the distinction between legal and equitable rights was strictly observed, and so long as a court at law had no power to give equitable relief, yet we urge that under the reformed procedure all rights, whether legal or equitable or both which arise out of, relate to, depend upon or are connected with a given controversy, are justiciable either at law or in equity.

## IV.

## DEPOSIT AND REBATES.

By the decision the defendants are given all rebates and deposits claimed except $987.48. The Court finds that this was paid to defendants on April 1, 1916.

At the trial the witness Hathaway testified that no such payment was made, to his knowledge. Plaintiff's witness testified only from an entry in the ledger and not from a book of original entry, nor from a voucher showing such payment.

It was agreed that the plaintiff might and should file copy of the original check and serve another copy upon defendants' counsel. No copy of such check has ever been served upon us, and upon inquiry from the Clerk we are informed and therefore believe, that the plaintiff has failed to file the check showing this payment. In the absence of that [166] proof we respectfully urge that the plaintiff has not only failed to prove that payment to defendants, but

that their failure to produce the check is a suppression of the best evidence, and is conclusive that no such check exists and no such payment made.

We believe, therefore, that in any event the decree should be corrected by giving us this added credit with accumulated interest.

Upon the foregoing ground, the defendants, appearing by this procedure, respectfully base their objections to the Findings and Decree as rendered, and urge a reconsideration and reargument of this cause.

Dated at Portland, Oregon, this 4th day of August, 1919.

Respectfully submitted,
CHARLES A. HARDY,
ISHAM N. SMITH,
Attorneys for Defendants.

Service accepted 8/4/19.
ROBERT TREAT PLATT,
Of Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 4, 1919. G. H. Marsh. [167]

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AND AFTERWARDS, to wit, on Monday, the 6th day of October, 1919, the same being the 79th judicial day of the regular July term of said court—Present the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [168]

*In the District Court of the United States for the District of Oregon.*

No. 7768.

October 6, 1919.

FORD MOTOR COMPANY

vs.

FANNIE S. WINCHELL, Administratrix, F. M. HATHAWAY et al.

**Order Denying Motion for Rehearing, etc.**

This cause was heard by the Court upon the petition of the defendants above named for a rehearing herein, and upon the objections of said defendants to the decree heretofore entered herein, said plaintiff appearing by Mr. Hugh Montgomery, of counsel, and the defendants by Mr. I. N. Smith, of counsel, upon consideration whereof

IT IS ORDERED that said petition for rehearing be and the same is hereby denied, and that the said objections be and the same are hereby overruled, and that the decree herein stand as entered.

R. S. BEAN

Judge.

[Endorsed]: Filed Oct. 14, 1919. G. H. Marsh, Clerk. [169]

AND AFTERWARDS, to wit, on the 4th day of December, 1919, there was duly filed in said court, a petition for appeal, in words and figures as follows, to wit: [170]

*In the District Court of the United States for the District of Oregon.*

No. 7768.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners, Formerly Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Petition for Appeal.**

To Honorable ROBERT S. BEAN, District Judge of the United States Court, for the District of Oregon:

The above defendants, F. M. Hathaway and Fannie S. Winchell as administratrix of the estate of V. W. Winchell, deceased, and F. M. Hathaway as administrator of the partnership estate of V. W. Winchell and F. M. Hathaway, copartners, formerly doing business under the firm name and style of Eugene

Ford Auto Company, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 28th day of July, 1919, and by the order entered on October 6th, 1919, refusing to grant the motion for rehearing and reargument and overruling the objections of said defendants to said decree do hereby appeal from said decree and from the said order to the Circuit Court of Appeals of the United States for the Ninth Circuit for the reasons set forth in the assignment of errors filed herewith, and they pray that this appeal be allowed; that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the rules of this court, in such case made and provided. [171]

And your petitioners further pray that the proper order relating to security for costs to be required of them be made.

F. M. HATHAWAY and
FANNIE S. WINCHELL,

As Administratrix of the Estate of V. W. Winchell, Deceased, and F. M. Hathaway, as Administrator of the Partnership Estate of V. W. Winchell and F. M. Hathaway, Copartners, Formerly Doing Business Under the Firm Name and Style of Eugene Ford Auto Company.

By ISHAM N. SMITH,
Their Attorney,

P. O. Address, 612 American Bank Bldg., Seattle, Washington.

The appeal prayed for in the foregoing petition is allowed and bond for appeal as required by law is fixed at the sum of $14,000.00.

CHAS. E. WOLVERTON,
United States District Judge for the District of Oregon, Who Tried the Above Cause.

Due service of within this —— day of December, 1919.

HUGH MONTGOMERY,
PLATT & PLATT,
Solicitors for Plaintiff.

[Endorsed]: Filed Dec. 4, 1919. G. H. Marsh, Clerk. [172]

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AND AFTERWARDS, to wit, on the 4th day of December, 1919, there was duly filed in said court, an assignment of errors, in words and figures as follows, to wit: [173]

*In the District Court of the United States for the District of Oregon.*

No. 7768.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M.

HATHAWAY, Copartners, Formerly Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,

Defendants.

**Assignments of Errors.**

Now come the defendants in the above-entitled cause, to wit, F. M. Hathaway and Fannie S. Winchell, as administratrix of the estate of V. W. Winchell, deceased, and F. M. Hathaway, as administrator of the partnership estate of V. W. Winchell and F. M. Hathaway, copartners, formerly doing business under the firm name and style of Eugene Ford Auto Company, and file the following assignments of errors upon which they will rely on their prosecution of this appeal in the above-entitled cause from the decree made by this Honorable Court on July 28th, 1919, and from the order overruling the motion for rehearing and reargument and objections to said decree made and entered on October 6th, 1919, to the United States Circuit Court of Appeals for the Ninth Circuit.

The Court erred against the just rights of these defendants:

I.

In denying and refusing the motion of these defendants to strike the amended bill of complaint from the files and for judgment of dismissal of the cause upon all the grounds and for all the reasons set forth in said motion, to wit:

That at the time said motion was made, there had been filed in this cause the printed transcript on writ

of error in the law action of the Ford Motor Company, the plaintiff above [174] named, against V. W. Winchell and F. M. Hathaway and others heretofore determined in this cause, and which said action was commenced in this court by this plaintiff on the 27th day of May, 1916, and is referred to in the amended bill of complaint, and that said transcript of error was theretofore filed in this cause on motion for a temporary injunction herein; and for the purpose of this motion this court is respectfully asked to take judicial notice and knowledge of the written record and files of this cause, including the original bill of complaint and the transcript on writ of error in the said law action between the parties hereto.

The defendants move to dismiss and to strike the amended bill of complaint from the files for and judgment dismissing this cause for the following reasons:

(1) By the said law action which was affirmed by the Circuit Court of Appeals of the United States for the Ninth Judicial District, these defendants were adjudged to be the owners of the automobiles involved in that case and referred to in the alleged limited agency contract, a copy of which contract is attached to the amended bill of complaint herein:

(2) By verdict in the law action and the said judgment which was affirmed by the United States Circuit Court of Appeals, these defendants were adjudged to be the owners of said property at the time the said law action was instituted.

II.

That the said automobiles so owned by the defend-

ants are the same automobiles referred to in plaintiff's amended bill of complaint herein, as shown by the records and files in said action.

III.

That by reason of the ownership of such automobiles by the said defendants, the said defendants mortgaged them to the First National Bank of Eugene, Oregon, and said mortgage was made by these defendants individually and is the mortgage referred [175] to in Paragraph 6 of the amended bill of complaint herein; and that the allegations in said paragraph 6 of the said amended bill of complaint from lines 11 to 18 inclusive thereof, are shown to be untrue by the records in this case.

That neither the alleged agency contract, nor any relation shows that these defendants made this mortgage as the agent of the plaintiff and that there is no provision in the said alleged agency contract authorizing these defendants to mortgage any property belonging to plaintiff for plaintiff.

That in mortgaging said property for their own benefit, these defendants acted within their rights, and that they did not convert the money of plaintiff, or any of plaintiff's money to their own use.

That said paragraph 6 of said amended bill of complaint wherein it charges the facts and things set forth at lines 11 to 18 thereof, is false and untrue and stultifies the record as herein shown.

That in the said replevin action, as shown by the printed transcript on writ of error therein, these defendants filed counterclaims, and the plaintiff did not plead the assignment of the alleged mortgage de-

scribed in paragraph 6 of the amended bill of complaint to the plaintiff, nor did it assert its alleged rights or any claim of right to equitable subrogation, nor did the plaintiff claim that these defendants had mortgaged their property, nor did the plaintiff set forth any claim of right or recovery by reason of the payment of the mortgage to the First National Bank of Eugene, Oregon, by plaintiff.

That this amended complaint and the entire record in this cause shows that the plaintiff in making the payment of the mortgage to the First National Bank of Eugene, Oregon, acted solely as a volunteer, and not otherwise and did not make such payment at the request of these defendants, or either of [176] them, or under any liability, either in law or equity, of plaintiff on the indebtedness secured by said mortgage.

The record on appeal in the said law action fails to show any assignment of error argued on such appeal for failure of the trial court to offset the amount paid by plaintiff on such mortgage, against the judgment awarded these defendants.

By motion for nonsuit, as shown by said transcript in the said law action, as well as by motion for directed verdict, and by the ruling of the court on the motion made by plaintiff to grant a new trial or to modify the judgment rendered therein in favor of the defendants to offset the sum paid by plaintiff to the First National Bank of Eugene, Oregon, as a counterclaim of offset against the judgment of defendants, the United States District Court for the District of Oregon, adjudged and decided that the

plaintiff is not entitled to offset or recover such amount so paid by plaintiff to the First National Bank of Eugene, Oregon; and also that the plaintiff was not entitled to be subrogated in the place of the mortgagee; and also that the plaintiff had no right in the premises.

On the said appeal of said law action, the plaintiff did not assign any of such rulings as error, and the questions involved in this suit and set forth in the amended bill of complaint herein, and asserted by reason of the pretended facts alleged in said bill of complaint and particularly in paragraph 6 of said amended bill of complaint and the following paragraphs of said amended bill of complaint have all been finally determined, decided and adjudicated adversely to the plaintiff herein.

IV.

That the replevin cause referred to in paragraph 7 of the amended bill of complaint herein and the various steps taken therein in said suit, and all of the proceedings had at the trial of said cause are all before the Court in this case, and [177] the record heretofore presented; and this court is requested to take judicial notice and knowledge, and these defendants here and now make profert thereof and demand oyer thereof.

These defendants move to strike the amended bill of complaint, and for judgment of dismissal in this cause for the further ground that said paragraph 7 of the amended bill of complaint herein shows that after the affirmance of said judgment, the plaintiff paid the same under process of this court, and that in

this cause, this plaintiff sought an injunction to restrain the enforcement of such judgment and to prevent the defendants from collecting the said judgment for all the reasons now urged in the amended bill of complaint, and that this court refused the said injunction, and no appeal was taken therefrom.

That the question of whether the said injunction should issue involves the merits of this controversy, and while the order thereon was interlocutory in form, it was final in fact, and by reason of no appeal being taken therefrom, the matter set forth in the amended bill of complaint and asserted by reason of the pretended facts alleged in paragraph 7 have been finally determined in favor of these defendants.

V.

These defendants further move to strike the amended bill of complaint from the files herein, and for a judgment of dismissal upon the ground that the matters and things set forth in paragraph 8 of said amended bill of complaint have been adjudicated adversely to plaintiff, and that by the proceedings in the law action, it was determined and adjudicated that the plaintiff made the payment to the First National Bank of Eugene, Oregon, voluntarily and without necessity in law or equity therefor, and without any request or authority, directly or impliedly of these defendants, or either of them, to make such payment, and that no relation existed between the plaintiff [178] and these defendants, or either of them, which required the plaintiff to make such payment, and that these defendants were at the time of such payment the owners of said automobiles; and

upon the further ground that the facts set forth in said paragraph show that the plaintiff made such payment without any request or authority from the defendants, and without any legal or equitable necessity or right so to do, and that the plaintiff is not entitled to ask subrogation herein.

VI.

The defendants move to strike this amended bill of complaint and for judgment of dismissal in this cause upon the further ground that paragraph 9 of the said amended bill of complaint affirmatively shows that in this court and cause the plaintiff sought to restrain the enforcement of the judgment recovered by the defendants to the amount of the payment which plaintiff made to the First National Bank of Eugene, Oregon.

VII.

The defendants further move to strike the amended bill of complaint from the files herein and for judgment of dismissal based upon the record in this case, together with the record in said replevin action between these parties upon the following grounds:

(a) That said records show that the plaintiff does not come into court with clean hands, and that the plaintiff has committed inequity in relation to the automobiles involved, and wilfully and unlawfully trespassed upon the rights of the defendants in relation thereto, and while guilty of such trespass and inequity, the plaintiff voluntarily paid the mortgage which the said defendants placed upon the said automobiles, and did not ask for or receive any assign-

ment of said mortgage, nor did the plaintiff profess to make such payment by reason of the alleged fact or claim that these defendants were the agents of plaintiff in making such mortgage, and that the pretense now set [179] forth in the amended bill of complaint herein that these defendants were the agents of plaintiff in making such mortgage, and executed such mortgage as said agents, is untrue and a sham and an attempted fraud upon this court, and is inserted by the plaintiff maliciously for the purpose of continuously harassing these defendants with vexations and groundless litigation in respect to matters already determined and settled by the Courts of the United States in favor of these defendants, and this suit is filed and the charges of embezzlement and conversion of plaintiff's money inserted in the bill of complaint against these defendants without justification or excuse, and solely for the purpose of annoying these defendants and defaming and injuring their reputation and business standing, and that the said amended bill of complaint does not state equity in favor of the plaintiff and against these defendants or either of them, or any cause of suit against these defendants or either of them.

2.

In hearing this cause and proceeding to trial and decree after the plaintiff had failed to appeal from the order dissolving the temporary injunction and refusing to continue such injunction *pendente lite.*

3.

In entering the decree for the plaintiff because the evidence shows:

(a) That the matter in controversy herein was necessarily and actually involved in the replevin action and was put in issue by plaintiff's amended complaint, especially by paragraph seven thereof in said cause, and was therefore within the issues of, or involved in the said replevin action and is *res adjudicata* herein;

(b) The defendants in said replevin action filed counterclaims arising out of and connected with the controversy in said cause which were in excess of, and greater than, the value of the property demanded by plaintiff, and that the Ford Motor [180] Company (plaintiff in said replevin action and plaintiff here) failed to file any reply in said replevin action, setting forth it's alleged or pretended right to either a legal or equitable counterclaim against defendant's claim of damages, although at said time the pretended right of plaintiff to assert a pretended counterclaim against defendants' damage claim existed, if it existed at all, by reason of the payment by the Ford Motor Company to the First National Bank of Eugene, Oregon, of the sum of money, to wit: $12,676.38, in payment of the chattel mortgage which defendants in said replevin action had given to said bank.

4.

After the entry of judgment in the replevin cause in the lower court, the Ford Motor Company made application to offset the said payment made by it to the First National Bank of Eugene, Oregon, in the sum of $12,676.38 and specified its alleged grounds for relief thereon. Such motion was denied and was

not reversed on appeal and such motion was a special application made after judgment and was reviewable on appeal and became *res adjudicata* upon the affirmance of said judgment.

5.

In the trial of said replevin action after the close of the testimony and upon motion of attorneys for defendants, the trial judge struck from the consideration of the jury all evidence relative to the payment by the Ford Motor Company of the said sum of $12,676.38, to the First National Bank of Eugene, Oregon, which motion was made upon the ground that such payment was voluntary; that the Ford Motor Company excepted to such ruling and thereafter the verdict of the jury was rendered and judgment thereupon entered, and that said judgment has been affirmed by this court without modification or allowance of said sum, and thereby the ruling of the said trial court was affirmed and the alleged rights of the Ford Motor Company to recover the said sum of $12,676.38 from these defendants was thereby adjudged adversely [181] to the said Ford Motor Company, and the gist of this equity suit became, was, and is, *res adjudicata.*

6.

The evidence introduced in said replevin case and in this case is uncontradicted and shows that the Ford Motor Company at the time of such payment of the sum of $12,676.38 to the First National Bank of Eugene, Oregon, had knowledge of all of the facts in relation to its own contract with the defendants in said replevin cause, who are defendants here and also

knew that said Ford Motor Company had begun its replevin action without tendering to the defendants the amount of their advances for the cars involved in said replevin cause, and also knew that said chattel mortgage in favor of the First National Bank of Eugene, Oregon, had been given by Winchell and Hathaway, and also knew that the said Winchell and Hathaway had paid to the Ford Motor Company a sum greater than the amount of said chattel mortgage in order to get possession of said cars originally, and with such knowledge the said Ford Motor Company was told by the agent of the First National Bank that said bank would not assign said notes secured by said chattel mortgage and would not accept anything from the said Ford Motor Company except in full payment of the claim of said bank and that the said Ford Motor Company made a voluntary payment to the First National Bank of Eugene, Oregon, of the sum set forth in the complaint herein as the basis of relief.

The evidence shows that said payment was entirely voluntary.

7.

That the contract relation between the Ford Motor Company and these defendants was wrongfully terminated by said Ford Motor Company at the time of the institution of said replevin action and that the Ford Motor Company did not make any payment to the First National Bank of Eugene, Oregon, by reason of any contract relation then existing between the Ford Motor Company and these [182] defendants, and that there was no duty by contract or by law

or by equity which required the Ford Motor Company to pay the obligation of Winchell and Hathaway to the First National Bank of Eugene, Oregon.

8.

That the evidence in this cause is insufficient to sustain the decree in favor of the plaintiff against these defendants for all the reasons herein set forth.

The Court further erred in rendering a decree herein in favor of the plaintiff and against these defendants in this; that in this suit in equity the Ford Motor Company did not come into court with clean hands because it had committed iniquity in relation to the subject matter of the controversy, to wit: the original contract between the Ford Motor Company and these defendants in this:

(a)

The Ford Motor Company wrongfully terminated said contract relation,

(b)

It did not make demand for the possession of said property involved in said replevin action before institution of this action.

(c)

It did not tender to these defendants or their predecessors the sums of money required of it to tender to them before attempt to take possession of said machines.

(d)

It trespassed upon the business of these defendants wrongfully and used the process, to wit: the replevin process issued out of the above District Court wrong-

fully and without right and maliciously abused such process. [183]

9.

The Court erred in decreeing and adjudging that plaintiff recover of and from the defendants and each of them, and have judgment and decree for the sum specified in said decree with the legal interest upon the ground and for all the reasons heretofore assigned, to wit: that the matters involved herein were, and are *res adjudicata,* and that the evidence is insufficient to sustain such decree, for all the reasons heretofore set forth.

10.

The court erred in failing to find in favor of the defendants herein and in refusing to find that the matters involved herein were, and are, *res adjudicata,* and also in failing and refusing to find herein that the payment made by the Ford Motor Company, to the First National Bank of Eugene, Oregon, was wholly voluntary.

11.

The court erred in overruling and denying the motion for rehearing and reargument, and also the objections to the said decree upon each and all of the grounds specified therein.

WHEREFORE these defendants and appellants pray that said decree be reversed and this Court enter a decree as prayed for in appellants' answer, or that said cause be reversed and remanded with such

direction further as the court shall determine proper in the premises.

ISHAM N. SMITH,
Attorney for Defendants.

P. O. Address; 612, American Bank Bldg., Seattle, Wash.

Due service of the within is hereby admitted at Portland, Ore., this —— day of December, 1919.

HUGH MONTGOMERY,
PLATT & PLATT,
Solicitors for Plaintiff.

[Endorsed]: Filed Dec. 4, 1919. G. H. Marsh, Clerk. [184]

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AND AFTERWARDS, to wit, on the 4th day of December, 1919, there was duly filed in said court a statement of the evidence, in words and figures, as follows, to wit: [189]

No. 2932.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners, Formerly Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Defendants' Proposed Statement of the Case.**

Defendants propose as a statement of this case, the stenographic notes of the oral testimony and the exhibits introduced in evidence.

Such stenographic notes are as follows: [190]

*In the District Court of the United States for the District of Oregon.*

No. 2932.

FORD MOTOR COMPANY, a Corporation,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix, etc.,

Defendants.

H. M. MONTGOMERY, Attorney for Plaintiff.

CHARLES A. HARDY, and ISHAM N. SMITH, Attorneys for Defendants.

R. S. BEAN, District Judge:

Portland, Oregon, July 18, 1919.

Hugh Montgomery..... 2
F. C. MacDougall.....12
Plaintiff rests..... 4
P. E. Snodgrass..... 5
F. M. Hathaway.....17
Defense rests.....24
George W. Alling.....25

[191]

Portland, Oregon, Friday July 18, 1919.

Mr. MONTGOMERY.—I offer in evidence a telegram and letter showing the cancellation of the contract between the plaintiff and the defendant.

Mr. SMITH.—Objected to as having been in issue and tried and disposed of in a former case.

COURT.—It will be admitted subject to your objection.

Mr. SMITH.—We want it understood that during the progress of this trial that the objections overruled and all the adverse rulings are excepted to.

Telegram marked Plaintiff's Exhibit 1.

Letter marked Plaintiff's Exhibit 2.

Mr. MONTGOMERY.—I desire to offer in evidence certain portion of the evidence offered in the trial of the case Ford Motor Company vs. V. W. Winchell and F. M. Hathaway.

Mr. SMITH.—In order to save time, we will agree, if you will, that the entire printed record may go in evidence and we can object to such portions of it as we may wish.

Mr. MONTGOMERY.—That is satisfactory to me.

Marked Plaintiff's Exhibit 3. [192]

**Testimony of Hugh Montgomery, for Plaintiff.**

HUGH MONTGOMERY, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination (Without Questioning).

Mr. MONTGOMERY.—After the sending down of the mandate in the case of the Ford Motor Company vs. Winchell, I was approached by Mr. Logan, repre-

(Testimony of Hugh Montgomery.)

senting Messrs. Winchell & Hathaway, I at the time representing the Ford Motor Company, and asked when we intended to pay the judgment which had been entered in that case, and was told by Mr. Logan, representing Messrs. Winchell and Hathaway, that if the judgment was not paid execution would issue, and acting upon that statement of Mr. Logan I took the matter up with the Ford Motor Company, and we procured the necessary funds and satisfied the judgment upon the face of the record, which was the judgment entered in the replevin case, and would not have so satisfied it at that time had it not been for the statement that execution would be levied.

Cross-examination.

(Questions by Mr. HARDY.)

Is it not a fact, Mr. Montgomery, that before paying the judgment you filed the original bill in this suit and procured an order to show cause why temporary restraining order should not be issued from this court, and pending that hearing an order restraining Winchell and Hathaway from issuing any execution?

A. My reply is that prior to the time the mandate came down from the Circuit Court of Appeals an application was made in the [193] early stages of the present proceeding for an injunction and a temporary order was issued, and thereafter dissolved.

Q. The court's records will disclose what the facts are in regard to that. A. Yes.

Q. And refreshing your recollection again as to your original bill of complaint, don't you remember

(Testimony of Hugh Montgomery.)

now that the mandate had come down when you filed the original bill; no execution had been issued, and you procured a temporary restraining order against the issuance of an execution, and it was so set out in your original bill of complaint?

A. I haven't verified that question recently, but my best recollection is that the first application was before the mandate came down. If I am not correct on that, correct me.

Q. Of course, the original bill filed here will show.

A. Yes, I have not verified that.

Q. Then, after it was set down for hearing, it was heard by this Court?

A. A hearing was had, yes.

Q. And the Court dissolved the temporary restraining order and denied—and on a motion to show cause, denied a restraining order pending this suit?

A. Yes, that is a fact. The restraining order was denied and my recollection is it was on the basis we had not established the insolvency of the defendants.

Q. And then, without any execution being actually issued, you paid the judgment. That is true, is it not, and it was satisfied?

A. That is true, but I said in my direct testimony on the [194] statement of Mr. Logan that execution would issue otherwise.

Q. You took no appeal from the order of the Court denying the temporary restraining order?

A. I did not.

Q. And the original suit was for an injunction and to offset against that judgment the same demand that

(Testimony of Hugh Montgomery.)

you are now making in this suit, was it not?

A. I think that is a correct statement. As I say, I have not recently read that original bill, but I think that is a correct statement.

Mr. HARDY.—That is all.

Witness excused.

Mr. MONTGOMERY.—That is all the evidence we have to offer until Mr. McDougall comes in.

Mr. SMITH.—Of course, we understand, as a matter of legal formality, you filed a denial to our counterclaim?

Mr. MONTGOMERY.—The reply as filed denies that the amounts set forth are due and owing.

Mr. SMITH.—You admit the amounts are correct.

Mr. MONTGOMERY.—We admit the amount of $800.00 is correct statement of the amount originally paid as deposit money, but we deny the sum of $1,900.-60 is the correct statement of the amount of rebate.

Mr. SMITH.—Very well. [195]

**Testimony of P. E. Snodgrass, for Defendants.**

P. E. SNODGRASS, a witness called on behalf of the defendants being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. HARDY.)

You are the president of the First National Bank of Eugene? A. I am.

Q. And you know Mr. Hathaway, one of the defendants in this case? A. I do.

(Testimony of P. E. Snodgrass.)

Q. And you knew, of course, Mr. Winchell before his death? A. I did.

Q. Mr. Snodgrass, as president of the bank, did you make loans to Winchell & Hathaway, for the bank?

A. I did, in connection with other officers of the bank, yes, sir. In this particular case, I don't remember whether I made this particular loan, or whether the cashier of the bank made it.

Q. It is set out in the answer here that certain notes were executed by Winchell & Hathaway to the First National Bank, being notes for about $2,800.00 each, aggregating some $40,000.00. Do you recall those notes? A. I do.

Q. Were the moneys represented by these promissory notes loaned to Winchell & Hathaway as individuals or otherwise?

A. It was loaned to them as individuals.

Q. And on their individual credit?

A. On their individual credit*ed,* secured by chattel mortgage on the cars.

Q. When these notes were paid, was the business transacted with you personally, in the matter of the payment of the notes? [196]

A. Well, I had intimate knowledge of the transaction. Our note teller actually handled the—

Q. But you were present?

A. Yes, I was present.

Q. Do you remember the name of the gentleman that paid these notes to you? A. No, I do not.

Q. If I may be permitted to refresh your recollection, was the name Mr. Godon?

(Testimony of P. E. Snodgrass.)

A. I couldn't say. He was the representative of the Ford people from Portland.

Q. And at the time these notes were paid by this gentleman, do you know whether that was done with the knowledge or consent of Winchell or Hathaway?

A. No, I do not.

Q. As far as you know, it was not with their knowledge or consent?

A. It was not with their—I am sure it was not with their consent. The negotiations for settlement had been pending a day or two or three, and they may have had knowledge that the Ford people intended to—

Q. As far as you know, they were not present when the notes were paid, and it was done without even their knowledge?

A. I am positive they were not present.

Q. If they say it was without their knowledge, you would not dispute that? A. No, I would not.

Q. What did you do when these notes were paid, and you received the money? What did you do with the notes?

A. Our note teller cancelled them in the usual way, and we supplied them with cancellation of the chattel mortgage. [197]

Q. Thereafter did the Ford Motor Car Company, through any representative of theirs, call on you again with reference to these notes? A. They did.

Q. What did they ask you to do?

A. They asked that we change our cancellation record put on the notes, mark it as an error to erase

(Testimony of P. E. Snodgrass.)

it and give them a transfer of the notes and chattel mortgage.

Q. Will you please give your best recollection of about how long it was after these gentlemen had paid these notes, that this request for a change of the record was made to the bank?

A. Well, I couldn't say as to that. It might have been a week or it might have been a month, or even longer. It was, I think, at least several days after.

Q. You knew this original case, replevin action, was pending against these parties at that time?

A. I did, yes, sir.

Q. Was the request made more than once that you alter your records and change that transaction?

A. It was made at least twice.

Q. At least twice? A. Yes.

Q. Did you decline? A. We declined.

Cross-examination.

(Questions by Mr. MONTGOMERY.)

Now, Mr. Snodgrass, when you said that this loan was made upon the individual credit of Messrs. Winchell [198] and Hathaway—I understood you to say it was. That is correct? A. Yes, sir.

Q. Then, why was it necessary for the bank to take a chattel mortgage on these cars?

A. That would be additional security.

Q. Additional security to the credit of Winchell and Hathaway

A. In addition to their personal credit same as we frequently take security from people that we loan to.

(Testimony of P. E. Snodgrass.)

Q. And in whom did you understand the title to the cars was at that time?

A. We supposed they belonged to Messrs. Winchell and Hathaway. Had no knowledge of any other claim.

Q. I also understood you, didn't I, that you really don't know whether or not they objected to the payment of this amount—that is Messrs. Winchell and Hathaway?

A. They didn't make any objection to the bank. I am sure they made no objection.

Q. Has the amount evidenced by these notes and mortgage ever been paid to the bank by Messrs. Winchell and Hathaway in addition to the payment made by the Ford Company? A. It has not.

Q. Then, in so far as the records of the bank show, and in so far as the real facts are, Messrs. Winchell and Hathaway have received some twelve thousand odd dollars—the exact amount I have not just before me; whatever the amount of the payment of the Ford Company was—from the bank as a loan and likewise received the benefit of the payment to the bank by the Ford Company. That is a fact, is it not? [199]

Mr. SMITH.—Objected to as incompetent, irrelevant and immaterial on the point, if the Court please, there is no relation shown between the Ford people and Winchell and Hathaway that would authorize them or justify them to make payments on our behalf, and has been no requests shown. The testimony is only that it has been paid.

(Testimony of P. E. Snodgrass.)

COURT.—For the purpose of showing no other payment only.

A. The amount as evidenced by the notes was advanced to Hathaway and Winchell. The notes were paid by the representatives of the Ford people, and the bank has not received any other payment.

Q. Did you or the First National Bank ever receive any instructions from the Ford Motor Co. with reference to the payment of this money, through the United States National Bank of Portland?

A. No, sir.

Q. Are you certain of that?

A. The money was wired, as I remember it, by the United States National Bank of Portland, to be paid to this man who was the representative of the Ford people. I knew the name and met the man at the time, and had known him before, but to just recall that name, I don't know. I suppose Godon was the name, but I don't recall it. The money was wired by the United States National Bank to be paid by them, but were no instructions by United States National Bank as to what the money was to be used for, or no instructions in that connection that I can recall.

Q. Now, just how soon after the payment of these notes by the Ford Motor Company, or the money that was tendered to the bank and accepted by the bank, did they come back and make this request on you which you have referred to for a change of the [200] bank's record?

A. Well, I couldn't tell you the exact number of days or weeks. As near as I can remember it will be

(Testimony of P. E. Snodgrass.)

several days, perhaps a month or even more.

Q. I was not quite clear in your direct testimony, or I did not quite understand the exact statement which you say was made to the Ford Company at that time. Will you restate that, please, with reference to the changing of your records. What was the request?

A. They requested that we change our endorsement our paid stamp endorsements on the notes.

Q. To what?

A. And make a transfer of the notes to them instead of cancellation of the notes.

Q. That is an assignment of the notes and security to the Ford Motor Company?

A. An assignment of the notes to the Ford Motor Company instead of cancellation of the notes as paid.

Q. And likewise an assignment of the mortgage.

A. Yes.

Q. And what was the reason that the bank refused to conform to that request?

A. Well, I told them that we had closed the transaction and that we would not now, after the question had gone into court and been raised, be a party to the changing of our records and be put in that position. Between ourselves and our customers we are in court. The records and the cancellation must stand.

Q. Why did the bank accept the money at that time?

A. We were acting under the advice of our attor-

(Testimony of P. E. Snodgrass.)

ney who knew that [201] there was a controversy, and the question being raised as to the ownership of the cars, and he advised us if they wanted to pay the notes, to accept it.

Q. May I ask who that attorney was?

A. Mr. Bryson, E. R. Bryson, of the firm of Smith & Bryson.

Redirect Examination.

(Questions by Mr. HARDY.)

Q. Did the bank not also on this occasion, whether it was a week or a month after this transaction was closed and this request was made—also state that the bank would not be disposed to sell to the Ford Motor Car Company the obligation of Winchell and Hathaway to the bank? That is your custom, you would not sell your customers' notes?

A. I think there was, yes—there was some such offer.

Q. That was against the policy of the bank?

A. It would be against the policy of the bank to do so without knowing it would be agreeable to our customer.

Q. Mr. Bryson, your attorney, was in no way connected, in no way whatever, with Winchell & Hathaway, was he? A. I don't think he was.

Q. Or with the Ford Motor Company?

A. In no way, as far as I know.

Mr. HARDY.—That is all.

Witness excused. [202]

**Testimony of F. C. MacDougall, for Plaintiff.**

F. C. MacDOUGALL, a witness called on behalf of the plaintiff being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MONTGOMERY.)

Q. You are an attorney, aren't you, Mr. MacDougall? A. Yes, sir.

Q. And you were in the spring of 1917 attorney for the Ford Motor Company?

A. My brother and I were, yes, sir.

Q. In connection with the case of the Ford Motor Co. vs. Winchell and Hathaway for the replevin of thirty-six touring cars? A. Yes, sir.

Q. Now, in connection with that proceeding a payment was made, if you recall, to the First National Bank of Eugene, Oregon of the sum of $12,676.38. I wish you would state the reason and purpose of making that payment by the Ford Motor Company.

Mr. SMITH.—Object to that as incompetent, irrelevant and immaterial. The private reasons of either the agent or the Ford Motor Car Company itself would have no bearing upon this claim for subrogation.

COURT.—Answer the question subject to that objection.

A. Well, it was for the—the payment was made to the bank for the purpose of relieving this lien which the firm of Winchell and Hathaway had placed upon the automobiles in the way of a mortgage.

(Testimony of F. C. Macdougall.)

Q. Now, do you know whether or not this $12,676.38 was a part [203] of the money which was originally obtained to use as a tender to Winchell and Hathaway?

Mr. SMITH.—That is objected to as incompetent, irrelevant and immaterial and not involved in the other case. No such tender made—if I heard the question.

Mr. MONTGOMERY.—I asked if it was money obtained for the purpose of use as a tender. That is the allegation of the complaint.

Mr. SMITH.—Wholly immaterial.

A. I don't know. Whoever—Mr. Godon—made the payment there. I couldn't say what money he did use there.

Q. Now, the amount recovered in the jugment against the Ford Motor Company was $16,077.50. Do you recall whether that is the same amount as 85% advanced upon the cars?

A. I don't recall; I have very near forgotten the case.

Cross-examination.

(Questions by Mr. SMITH.)

Q. Mr. Macdougall, this payment matter was handled by Mr. Godon, was it not? A. Yes.

Q. You were not even a witness to it?

A. No, sir.

Q. And all you had to do with the case came in afterwards? A. Yes, sir.

Q. You were a witness at the other trial, in the replevin action were you not?

(Testimony of F. C. Macdougall.)

A. No, sir, I was not.

Witness excused. [204]

Mr. HARDY.—Your Honor, we have set up in our answer in this case the dates and amounts of the various notes that were made by Winchell and Hathaway to the First National Bank, and which were paid by Mr. Godon at the time referred to in Mr. Snodgrass' testimony, and Mr. Montgomery tells me he will stipulate that the allegations of the answer as to the dates of the notes and the amounts are correct.

Mr. MONTGOMERY.—In connection with the stipulation do I understand, Mr. Hardy, that you claim that the amount set forth in this answer relates to property other than the thirty-six cars involved in this case?

Mr. HARDY.—It is also alleged in the answer that these notes were secured by two separate mortgages; one chattel mortgage covered eight automobiles, and the other covered twenty-four automobiles. I took that from the record, and the reason I didn't bring the certified copy, I thought you had these notes.

Mr. MONTGOMERY.—The only reason I asked the last question—I am willing to stipulate that the amount set forth in the answer is a correct statement of the amount contained in the notes but I don't want to be bound by any conclusion in the answer that it included property not involved in the Winchell and Hathaway case.

Mr. SMITH.—You stipulate as to the dates of the notes?

Mr. MONTGOMERY.—Yes, and the amounts therein set forth.

Mr. SMITH.—In order to verify the record, in the absence of the original mortgages, I suppose we can agree, if Mr. Montgomery will, that we can supply the record with certified copy of the mortgages within ten days.

Mr. MONTGOMERY.—That is satisfactory.

Mr. HARDY.—If your Honor please, in support of our plea [205] of *res adjudicata*, we wish to offer the judgment-roll in case No. 7027, Ford Motor Car Company vs. Winchell & Hathaway, and I presume, as this is in the custody of the clerk it becomes necessary that we substitute a copy.

COURT.—I understood it to be in that abstract.

Mr. MONTGOMERY.—I think it is in that record. For the purpose of preserving the record, I wish to interpose the formal objection to the introduction upon the ground that it appears from the face of the record that the question, as I understand it, as to the payment and the right to recover the payment of $12,077.50 in the replevin action was expressly withdrawn from the jury by the instructions of the Court.

COURT.—Very well.

Record marked Defendants' Exhibit "A."

Mr. HARDY.—We also wish to offer the original bill of exceptions in the case, for the same purpose.

Marked Defendants' Exhibit "B."

Mr. HARDY.—We also desire to offer, your Honor, the exhibits in the action just referred to, with respect to the paid invoices and the receipts, showing

that these cars belonged to us, and that issue was adjudicated in that case.

Mr. MONTGOMERY.—I of course, desire to interpose objection to that evidence upon the ground that it appears from the face of the record in the prior case that these cars were sold under a conditional sales contract, the validity of which has been subsequently affirmed in the Circuit Court of Appeals, and in the case of the Ford Motor Company vs. Winchell & Hathaway the only point, as I interpret the decision of the Circuit Court of Appeals,—the only point adjudicated in that case was [206] the fact that proper steps had not been taken to allow the preliminary foundation for an action at replevin, but the Court in that case did not undertake to determine the question of the title to the property, or the validity of the contract between the parties, but expressly eliminated that from its decision.

Papers marked Defendants' Exhibit "C."

Mr. MONTGOMERY.—Let the record show if there are any discrepancies between the copy attached to the complaint and the original contract, they may be corrected.

Mr. HARDY.—We now offer, your Honor, the exhibit of the contract between the Ford Motor Car Company and Winchell & Hathaway that was received in evidence in the replevin action, for the purpose of showing that it was an issue in that action—the same contract that is set out in the complaint here.

Mr. MONTGOMERY.—Object to that on the ground the decision of the Circuit Court of Appeals

expressly eliminates the contract.

Marked Defendants' Exhibit "D."

Mr. HARDY.—I presume the judgment-roll contains that motion for a new trial and for setoff.

Mr. MONTGOMERY.—Likewise in the transcript.

Mr. HARDY.—I now desire, if your Honor please, to offer in evidence the briefs which apply to the respective parties in the replevin action.

Mr. MONTGOMERY.—I don't think I have any objection.

Mr. HARDY.—May we ask your Honor to take judicial notice of the reported case in the "Federal Reporter" which applied in that action.

Mr. MONTGOMERY.—I consent that he may.

COURT.—Yes. [207]

**Testimony of F. M. Hathaway, for Defendants.**

F. M. HATHAWAY, one of the defendants, being first duly sworn, testified in his own behalf as follows:

Direct Examination.

(Questions by Mr. HARDY.)

Q. You are the defendant in this case and was the administrator of the partnership estate of Winchell & Hathaway? A. Yes, sir.

Q. Your partner, Mr. Winchell, died as the result of influenza and pneumonia last winter, didn't he, while that suit was pending? A. Yes, sir.

Q. You were present at the trial of the replevin action? A. Yes, sir.

Q. And the testimony of V W. Winchell as contained in the bill of exceptions is the same V. W.

(Testimony of F. M. Hathaway.)

Winchell who is deceased, and who was a defendant in this suit, and whose administrator has been substituted?

A. Yes, sir.

Q. Mr. Hathaway, at the time Mr. Godon if he was the person, or representative of the Ford Motor Company, paid certain notes of Winchell and Hathaway at the First National Bank of Eugene, Oregon, as Mr. Snodgrass has just testified, were you present when that was done? A. No, sir.

Q. Was it done with your knowledge? A. No.

Q. Or your consent? A. No, sir.

Q. Or with Mr. Winchell's knowledge or consent?

A. No, sir.

Q. Did you know of the actual payment of the notes until after it had been made? [208]

A. It was the day after, as I remember it.

Q. Someone told you that they had paid your notes? A. Yes, sir.

Q. Mr. Hathaway in borrowing the money from the bank—in borrowing the particular money represented by the notes set out in your answer, from whom did you borrow the money?

A. Borrowed the money from the First National Bank of Eugene.

Q. For whom?

A. For our own personal use.

Q. I will ask you whether or not you borrowed it on your individual credit. A. Yes, sir.

Q. Was this money that you borrowed, borrowed for the Ford Motor Car Company? Did the Ford

(Testimony of F. M. Hathaway.)

Motor Car Company have anything to do with the borrowing of this money?

A. The Ford Motor Car Company didn't know anything about that transaction.

Q. Did you borrow it for them or did they have anything to do with it?

A. They had nothing to do with it whatever.

Q. Did you borrow any money from the bank for the Ford Motor Car Company and convert it to your own use? A. We had no authority whatever.

Q. Did you do anything of the kind?

A. No, sir.

Q. Whose property, if any, did you mortgage to the bank to secure payment of the notes?

A. Mortgaged our own property.

Q. Was it property that you owned and had paid for? A. Yes, sir.

Q. And for which you held receipts in full?

A. Yes, sir. [209]

Q. And you are familiar with these paid drafts—paid invoices and receipts that have been offered in evidence in this case? A. Yes, sir.

Q. Do those represent property which you had paid for and which belonged to you, and that you mortgaged? A. Yes, sir.

Q. You treated the property as your own?

A. Yes sir.

Q. And I will ask you whether or not you paid in full for the Ford automobiles that you mortgaged before you took them from the railroad company.

(Testimony of F. M. Hathaway.)

A. According to our contract it was necessary for us to lift the drafts before we received any bill of lading. In fact the Ford Motor Company mailed those drafts to the FirstNational Bank and then in turn the First National Bank notified us that the drafts were there, waiting us.

Q. Did the cars come into your possession until you had paid for them? A. No, no.

Q. Mr. Hathaway, at the beginning of the year in question, you were buying Ford Motor cars, did you make any deposit with the Ford Motor Car Company of your money?

A. Our contract called for an $800.00 deposit.

Q. Did you make the deposit? A. Yes, sir.

Q. Did you ever get the money back from the Ford Motor Car Company? A. Never have.

Q. Have they promised to pay it back?

A. Supposed to be paid back at the end of the time that the contract expired.

Q. This contract that is in evidence covers that point? [210] A. Yes.

Q. But you have never received it. Now, you paid a certain amount of money for these cars at the time of the purchase and delivery? A. Yes, sir.

Q. Do you recall the provision of the contract that is in evidence relative to getting a rebate in the event that you bought or purchased a certain number of cars—getting a discount or rebate?

A. There was a graded scale of a certain amount—an additional commission on volume of business; if I remember right, it increased according—oh, like

(Testimony of F. M. Hathaway.)

one per cent for each ten thousand dollars worth of business. The contract will show the exact amount, but that is just about the figures.

Q. Then after you had bought and paid for the cars, if the amount of merchandise that you purchased from the Ford Motor Company reached certain figures, they sent you back part of your money—is that right—or sent you back a certain rebate

A. Yes, sir. It was just a matter of purchasing the cars from the factory; wouldn't make any difference whether they were sold; simply that they were paid for.

Q. Now, you allege in your complaint that you purchased upwards of 179 automobiles during the year in question in this case? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. And that would entitled you to a rebate of $1900.60. Is that correct, approximately?

A. That is approximately correct.

Q. Have they ever paid you that money? [211]

A. No, sir.

Q. Have you ever demanded the money from them? A. Yes, sir.

Cross-examination.

(Questions by Mr. MONTGOMERY.)

This money, that is the money part of which is made up of the $12,676.38 being sued for in this case, and which was procured by you from the First National Bank on the thirty-six touring cars, was procured by you before you received the notice of the cancellation of the contract by the Ford Motor Com-

(Testimony of F. M. Hathaway.)

pany, was it not? A. Yes, sir.

Q. And at the time that this money was procured the bank required from you a mortgage upon these thirty-six Ford touring cars, before advancing the money, didn't they? A. Yes, sir.

Mr. HARDY.—It is thirty-two.

Q. Now, this property, that is the touring cars upon which this mortgage was given, were purchased under the regular sales contract which then existed between you and the Ford Motor Company, were they not? A. Yes, sir.

Q. And the transaction by which you gained possession of these cars, which you say you paid for in full, was the ordinary transaction whereby you deposited 85% of the purchase price, was it not?

A. We bought these cars on a wholesale basis, 85% of the retail price.

Q. Possibly you don't quite understand what I am getting at. You testified a moment ago that these cars were obtained [212] under the regular sales contract. That is correct, is it not?

A. Yes, sir.

Q. And when you obtained possession of them you paid the 85% as required by the contract, didn't you? That is the way you obtained possession of them?

A. You mean 85% of the selling price?

Q. Well, to make myself a little more clear possibly: Under the contract and according to the contract under which you purchased you were obliged to pay an advance 85%, were you not, of the purchase price of the car? A. No, sir.

Q. What did you do?

(Testimony of F. M. Hathaway.)

A. We paid the full purchase price of these cars.

Q. What did the contract call for?

A. Whatever it reads.

Q. You know, as a matter of fact, it reads 85%, don't you?

Mr. SMITH.—I think, as a matter of fact, that is a matter as to the relationship of these parties and I think counsel and I are about of one mind. As I recall the provisions, I think Ford fixed the retail price; that is where we claim conflict with the Sherman law; and they paid 85% of the retail price—what he calls the wholesale price.

Mr. MONTGOMERY.—I simply desire to have the witness state the manner of the payment. He said paid in full.

Mr. SMITH.—Paid in cash.

Q. You paid 85% as provided in the contract, didn't you?

A. Of what the Ford Motor Company called the retail price.

Q. Now, when you speak of these 179 cars, weren't part of those sold to some subagents who were entitled to receive rebates?

Mr. SMITH.—Objected to as incompetent, irrelevant and [213] immaterial; has nothing to do with this case, if the Court please. No such defense set up.

Mr. MONTGOMERY.—They claim rebate on 179 cars, and the inquiry was merely that I was going into the amount which the witness stated.

Mr. SMITH.—No objection as to the amount but I object to the question as to whether or not any sub-

(Testimony of F. M. Hathaway.)

agents were entitled to any part of it.

Q. I will change the form of the question. Did you purchase this entire amount of 179 cars yourself?

A. Yes, sir.

Q. Did you earn the rebate on each one of them yourself? A. Yes, sir.

Q. And no subagents were entitled to any rebate on it?

Mr. SMITH.—Object as incompetent, irrelevant and immaterial.

COURT.—He can answer the question.

A. I believe if you will refer to that contract, if we have a subagent under us that this subagent looks to us for any rebates he is entitled to.

Q. As a matter of fact if that subagent has received part of his rebates, do you know it, or don't you?

A. There was no subagent at that time entitled to any rebate.

Q. Now, upon what basis do you compute this amount of $1,960?

A. Have you made up a computation?

A. We figured it out according to the contract specifications.

Q. Now, as a matter of fact, Mr. Hathaway, you and Mr. Winchell, your partner, have never paid this $12,676.38 to the First National Bank of Eugene, have you?

Mr. SMITH.—Object as incompetent, irrelevant and immaterial. [214]

COURT.—I think that is a material question in

(Testimony of F. M. Hathaway.)

the case. Whether it has any effect upon the recovery or not is a different question. You can answer.

A. Yes, sir.

Q. And you did actually receive that amount from the First National Bank of Eugene, didn't you?

A. From the fact that the notes are cancelled we have never had to pay them.

Q. The question was, Mr. Hathaway, did you in the first instance receive that amount from the bank?

A. The fact that the notes were cancelled, we would have that credit of course.

COURT.—At the time you gave the notes you received the money, didn't you?

A. Oh, yes, sir. I didn't understand you.

Witness excused.

Defense rests. [215]

**Testimony of George W. Alling, for Plaintiff.**

GEORGE W. ALLING, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. MONTGOMERY.)

Q. Mr. Alling, in what line of business are you engaged?

A. I am with the Ford Motor Company.

Q. In what capacity?

A. Principally as accountant and general office work.

Q. Have you the custody of the records and books of the Portland branch of the Ford Motor Company,

(Testimony of George W. Alling.)

showing the transactions between the Ford Motor Company and Winchell & Hathaway of Eugene?

A. Just at the present time.

Q. There is set forth in the answer filed in this case a claim of $1,900.60 for rebates to which Messrs. Winchell & Hathaway claim they are entitled. I wish you would state into the record and for the information of the Court the exact figures constituting that rebate, as shown by the records of the Ford Motor Company.

A. We figure a balance due of $1,338.10.

Q. A balance due to whom?

A. Balance due as rebate of $1,338.10.

Q. Just advise the Court how you arrive at that computation.

A. The total rebate due, as we figured it, was $2,325.58, of which they were paid $987.48, leaving a balance as I figure of $1,338.10.

COURT.—Leaving a balance of what?

A. $1,338.10. [216]

COURT.—How do you arrive at that conclusion? How many cars did they purchase?

A. Those figures have not all been added together.

Q. Have you a copy of that typewritten statement, showing this computation, you showed me yesterday? A. None other than this.

Q. I though you had a typewritten computation yesterday attached to letter.

A. Only the totals, 116 cars.

COURT.—116. How many do those receipted bills show?

Mr. SMITH.—We are claiming in 179.

(Testimony of George W. Alling.)

COURT.—I know, but I don't know whether you have checked up these receipted bills.

Mr. HARDY.—Some of these receipted bills were offered in evidence at the former trial, showing a continuing custom of doing business.

COURT.—Never mind, if you haven't checked them up. It doesn't make any difference.

Q. Mr. Alling, have you computed whether or not the $16,077.50 which was recovered in the replevin action is the same as the 85% advanced on the cars?

A. As near as I can figure approximately that, plus the freight charges they would have to pay.

Cross-examination.

(Questions by Mr. HARDY.)

Mr. Alling, you say the record shows a payment on this rebate of $987.48. Will you kindly produce the voucher, cancelled check, anything to show such a payment?

A. All I have here is the stamp that it was paid on April 12, 1916, No. 7416. [217]

Mr. MONTGOMERY.—Produce the document to which you have just referred, Mr. Alling. (Witness does so. What is the document you have just handed me?

A. That is a statement of purchases.

Mr. MONTGOMERY.—From what is this taken?

A. Taken from the transcript of the sales record.

Mr. MONTGOMERY.—Is this an original entry of the records of the Ford Motor Company.

A. That is merely compiled for arriving at the amount to be paid them.

(Testimony of George W. Alling.)

COURT.—Not a record kept as the cars are sold? Not an account with Hathaway originally?

A. Oh, no.

Mr. MONTGOMERY.—In what form is that kept, Mr. Alling?

A. That is kept in the ledger.

Mr. MONTGOMERY.—Can you produce the ledger? Have you the ledger here?

A. Not here, no. That will merely show the total amounts.

Mr. MONTGOMERY.—I might state to the Court I understood from the witness in talking with him that this was the original document from which the ledger was compiled. That is the reason we don't have the ledger.

A. This is compiled from the ledger.

Mr. MONTGOMERY.—This instrument you have handed me was compiled from the ledger?

A. Yes.

Mr. HARDY.—I don't think it is competent.

Mr. MONTGOMERY.—I don't intend to offer it.

Q. (Mr. HARDY.) Now, surely, in the records of the Ford Motor Car Company here in Portland, this branch house, if there had ever been any check or draft of that amount sent to Winchell & [218] Hathaway, you could produce the voucher?

A. I could produce it, yes.

Q. For the rebate, that is.

A. Had I any knowledge it was required.

Q. On the other hand if in truth and in fact this was never paid, but this is some bookkeeping entry

(Testimony of George W. Alling.)

that is made perhaps by the Ford Motor Car Company to take care of this account on some charge they are trying to make against Winchell & Hathaway, why, you would not know it from this statement, would you?

A. Other than the notation there; the check number and date is noted on that sheet.

Q. Why haven't you gone through the files and records there and undertaken to find out how this was paid?

A. I had no knowledge of this case whatever until yesterday afternoon.

Q. Well, you don't know as a fact that it was paid at all, do you?

A. No other evidence than that the check is entered on our books as having been paid.

Q. I see. It is purely hearsay with you from some notation on this sheet.

A. No, the check is entered in our ledger; if it had not been paid the entry would not be in the ledger.

Q. Do you mean to say you have evidence of the actual check of that amount of money was issued and paid and sent to Winchell & Hathaway?

A. I have this entry in the ledger. I can produce the check if I have time to look it up.

Q. A bookkeeper could make an entry of a credit of $987.48 without in fact a check or draft or money having been paid out, couldn't he? [219]

A. Oh, yes, he could.

Q. And that is all you know about it. There is such a credit on the books there in the company's office. Isn't that true? A. Yes.

(Testimony of George W. Alling.)

Q. You have no evidence or knowledge of the actual payment of your own, have you?

A. I haven't the check itself without the time to look it up, no.

Q. Now, as an accountant, before you would audit such a statement you would have to have the voucher, the evidence of the actual payment, wouldn't you, before you?

A. I have had no time to procure that. As I say I had no knowledge of this case until yesterday.

Q. As an accountant you would require some other evidence in the way of voucher to show that payment had actually been made, wouldn't you?

A. Not necessarily.

Q. Or by checking it with the cash account.

A. Well, yes, check with the cash account.

Mr. MONTGOMERY.—I may possibly be to blame in this matter myself. I am perfectly willing to produce the original voucher.

Mr. SMITH.—All we want to get at, Mr. Montgomery, is the truth. I know that some has been paid.

Mr. HARDY.—I know they didn't get the money.

Mr. MONTGOMERY.—I don't want to be placed in the position of offering something not true. I would like permission to produce that voucher.

Mr. SMITH.—If you have the original voucher and will make a copy and certify it and file with the clerk, that will be [220] satisfactory. All we want is the truth.

Mr. MONTGOMERY.—I don't want to be placed in the position of having produced something not true.

(Testimony of George W. Alling.)

Mr. HARDY.—No, we don't construct that.

A. Winchell & Hathaway may have received the credit due them subsequent to the time that that payment was made. You see these accounts were figured periodically and settled up. That was supposed to be a complete settlement up to that time.

Mr. HARDY.—Then, if there was any check No. 7416 you can easily produce the check, can't you?

A. Yes.

Q. Well, that is all we want. Just one other question: Do you know whether all of the cars that were paid for by Winchell & Hathaway to the Ford Motor Car Company were afterwards replevined, taken away by the Ford Motor Car Company, are included in your computation of the number of cars?

A. I think they are not.

Q. They are not?

A. As far as my knowledge. I had no personal knowledge of this case at the time.

Witness excused.

Plaintiff rests.

COURT.—How many cars were included in that replevin action?

Mr. SMITH.—36 touring cars; four sedans, as I remember,—35 touring cars and one sedan. [221]

*In the District Court of the United States for the District of Oregon.*

No. 2932.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY et al.,
Defendants.

United States of America,
District of Oregon,
County of Multnomah,—ss.

I, Mary E. Bell, hereby certify that I acted as official stenographer in the above-entitled case, and that the foregoing is a full, true and correct transcript of my notes taken in the above-entitled case, as I verily believe.

MARY E. BELL. [222]

WHEREFORE, the defendants pray that said stenographic notes, together with the exhibits, be settled as the statement of the case herein.

Dated this 4th day of December, 1919.

ISHAM N. SMITH,
Attorney for Appellants.

Service accepted by copy of stenographic notes; and copy of exhibits is waived.

Dated this 4th day of December, 1919.

HUGH MONTGOMERY,
PLATT & PLATT,
Attorneys for Plaintiff. [223]

*In the District Court of the United States for the District of Oregon.*

No. 2932.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners, Formerly Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Defendants.

**Stipulation of Correctness of Stenographer's Transcript.**

It is hereby stipulated and agreed that the annexed statement of evidence and exhibits, consisting of 1 volume of evidence from page 1 to page 29, inclusive, and of the exhibits designated hereinbefore numbered plaintiffs from 1 to 3 and a check, and Defendant's Exhibits "A" to "E," may by the Court be settled, allowed and approved as correct.

It is further stipulated that the records and files of the United States Circuit Court of Appeals for the Ninth Circuit, which were introduced in evidence at the trial of the above cause as exhibits, may be certified to the Circuit Court of Appeals in their

original form and need not be printed in the printed transcript.

It is further stipulated that all of the records and exhibits introduced in evidence at the trial of the above cause, all of which are on file herein, may be settled and allowed as part of the statement and record on appeal.

Dated this 4th day of December, 1919.

HUGH MONTGOMERY,
PLATT & PLATT,
Attorneys for Plaintiff.
ISHAM N. SMITH,
Attorney for Defendants. [224]

AND AFTERWARDS, to wit, on the 4th day of December, 1919, there was duly filed in said court, a praecipe for transcript, in words and figures as follows, to wit:

*In the District Court of the United States for the District of Oregon.*

No. 7768.

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners, Formerly

Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,

Defendants.

**Praecipe for Transcript of Record.**

To the Clerk of the Above Court:

Please prepare and certify for the appeal of defendants herein to the Circuit Court of Appeals of the United States for the Ninth Circuit, copies of the following:

1. Plaintiff's original bill of complaint.
2. The original injunction and notice of hearing of injunction *pendente lite.*
3. The documents used by both plaintiff and defendants at such hearing and the order of the Court thereon.

3½. Order dissolving said injunction made at the hearing.

4. The amended bill of complaint of plaintiff.
5. The motion directed against the amended complaint.
6. The amended answer of defendants to said amended bill of complaint.
7. The reply of plaintiff to the affirmative matter of said answer.
8. Stipulation concerning statement of evidence.
9. Statement of evidence as settled and signed by the Court.
10. Opinion or decision of the court, if any.
11. All exhibits introduced at the trial of said cause.
12. Decree of the Court.

13. Motion for rehearing and rearguing, also objections to decree. [226]
14. Order on such motion.
15. Petition for appeal and citation on appeal.
16. Order allowing appeal.
17. Assignments of errors.
18. Appeal bond.
19. This praecipe.
20. Citation showing service and return.
21. Stipulation that exhibits may be certified and especially that the printed exhibits on the original plea may be certified without printing in this record.
22. Certificate of the clerk.

ISHAM M. SMITH,
Attorney for Defendants and Appellants.

[Endorsed]: Filed Dec. 4, 1919. G. H. Marsh, Clerk. [227]

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**Certificate of Clerk U. S. District Court to Transcript of Record.**

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, pursuant to the order allowing the appeal in the within-entitled cause, do hereby certify that the foregoing pages numbered from 3 to 227, inclusive, constitute the transcript of record upon appeal in the case in which Ford Motor Company, a corporation, is plaintiff and appellee, and F. M. Hathaway and Fannie S. Winchell, as administratrix of the estate of V. W.

Winchell, deceased, and F. M. Hathaway, as administrator of the partnership estate of V. W. Winchell and F. M. Hathaway, copartners, formerly doing business under the firm name and style of Eugene Ford Auto Company, are defendants and appellants; that the said transcript of record has been prepared by me in accordance with the praecipe of the appellants filed in said cause, and that the same is a full, true, and complete transcript of the record and proceedings had in said court in said cause designated by the said praecipe to be included therein, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is $71.85, and that the same has been paid by the said appellants.

In testimony whereof, I have hereunto set my hand and caused the seal of said court to be affixed at Portland, in said district, this 31st day of December, 1919.

[Seal] G. H. MARSH,
Clerk. [228]

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[Endorsed]: No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. F. M. Hathaway and Fannie S. Winchell, as Administratrix of the Estate of V. W. Winchell, Deceased, and F. M. Hathaway, as Administrator of the Partnership Estate of V. W. Winchell and F. M. Hathaway, Copartners, Formerly Doing Business Under the Firm Name and Style of Eugene Ford Auto Company, Appellants, vs. Ford Motor Company, a Cor-

poration, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed January 2, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

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*In the United States Circuit Court of Appeals, for the Ninth Circuit.*

No. ——.

FORD MOTOR COMPANY, a Corporation,
Appellee,

vs.

F. M. HATHAWAY and FANNIE S. WINCHELL, as Administratrix of the Estate of V. W. WINCHELL, Deceased, and F. M. HATHAWAY, as Administrator of the Partnership Estate of V. W. WINCHELL and F. M. HATHAWAY, Copartners, Formerly Doing Business Under the Firm Name and Style of EUGENE FORD AUTO COMPANY,
Appellants.

**Appellants' Designation of Record to be Printed in the Transcript.**

To the Honorable FRANK D. MONCKTON, Clerk of the Above Court:

The appellants above named designate and specify the following portions of the record in the above cause to be printed in the transcript:

It will be noted that this request for printing relates to two different cases, to wit:

1. The above cause.

2. The transcript and briefs in case number 2963, on file in this court, said case number 2963, being between the same parties to this case, and which is the original replevin case out of which this present suit arises.

The record in each case designated to be printed in the transcript herein is referred to in the particular case to which said record relates.

RECORDS IN THE ABOVE CASE.

From the records in the above case, the appellants designate the following documents for printing in the transcript:

1. Original bill of complaint, filed February 25, 1918.

2. Motion for order to show cause and restraining order, filed February 25, 1918.

3. Order to show cause, filed February 25, 1918.

4. Answer, affidavit of Luke L. Goodrich, and motion and showing upon restraining order, filed March 16, 1918.

This request does not include the printing of the

entire record of the case No. 2963, which, however, was used at said motion.

5. Order allowing motion to dissolve, order to show cause, and denying application for temporary injunction, filed March 25, 1918.

6. Amended complaint, filed April 2, 1918.

7. Motion to strike amended complaint, filed September 13, 1918.

8. Order overruling motion to dismiss and allowing defendant ninety days to answer, filed September 30, 1918.

9. Answer, filed January 24, 1919.

10. Reply, filed July 18, 1919.

11. Decree, rendered and entered July 28, 1919.

12. Certified copies of four chattel mortgages introduced as exhibits, filed July 26, 1919.

13. Motion for rehearing and reargument, filed August 4, 1919.

14. Order denying the same, filed October 6, 1919.

15. Plaintiff's Exhibit 1, being Defendants' Exhibit "E."

16. Seven invoices of Ford Motor Company, with sight draft attached.

17. Four invoices of Ford Motor Company, with sight draft attached. (The above invoices with sight draft were introduced as exhibits.)

18. Petition for appeal.

19. Assignment of error accompanying the same.

20. Order allowing appeal and fixing bond.

21. Citation on appeal.

22. Oral testimony taken by the stenographer and allowed *in extenso,* as statement of the case.

23. Stipulation agreeing to settlement of stenographer's transcript as statement of the case.

FROM CASE No. 2963, THE REPLEVIN CASE BETWEEN THE SAME PARTIES.

All references are to the printed records in said case, which were introduced in evidence in the above cause as Plaintiff's Exhibit 3, and Defendants' Exhibit "E."

1. Amended complaint, Plaintiff's Exhibit 3, pages 5 to 8 inclusive.

2. Answer thereto, Plaintiff's Exhibit 3, pages 9 to 15.

3. Reply, Plaintiff's Exhibit 3, pages 15 to 17.

4. Verdict and judgment, Plaintiff's Exhibit 3, pages 17 to 20.

5. Petition for new trial, Plaintiff's Exhibit 3, pages 20 to 25.

6. Petition for new trial or modification of judgment, Plaintiff's Exhibit 3, pages 126 to 130.

7. Order denying new trial, Plaintiff's Exhibit 3, pages 25 to 26.

8. The following proceedings shown in Plaintiff's Exhibit 3:

Print in full Ford Motor Company's assignment of error number 6, pages 37 and 38, and assignment of error number 12, pages 42 and 43.

From Ford Motor Company's bill of exceptions, to wit: Exception number 11, subdivision B, set out at pages 108, 109, 110 and 111, down to but not including the expression "after the close of all of the evidence introduced upon the trial of the above-entitled cause," etc.

9. The following proceedings at page 175, Plaintiff's Exhibit 3:

Q. What was done with this $16,077.50?

A. Why, after the United States Marshal had taken the cars and they were in his possession three days, I was notified through my office at Portland—

Mr. SMITH.—Just a minute. That is objected to, if the Court please. Any conversation between him and the plaintiff, or any instructions that he gave after the action was brought is wholly immaterial.

The COURT.—I don't think it is material what became of the sixteen thousand?

Mr. SMITH.—As long as he didn't pay it to us, that is all there is to it.

COURT.—As long as it didn't get to the defendants.

10. Print in full the cross-examination, redirect examination and recross examination of witness McNamara, pages 189 to 199, Plaintiff's Exhibit 3, also the direct examination and cross-examination of witness F. B. Norman, recalled for plaintiff, pages 199 to 205.

11. Print the following testimony from the direct examination of F. M. Hathaway, Plaintiff's Exhibit 3, pages 260 and 261:

Q. When you take the cars from the Ford Motor Car Company and pay them, they figure that on your bonus, just as if you passed them out to the public, do they? A. Yes, sir.

Q. That is they were sold as far as the Ford Motor Car Company is concerned?

A. That is the way.

Q. And fully paid for, as far as you are concerned? A. Yes, sir.

Q. And if you don't sell them again yourself, that is your loss, is it?

A. They remain our property.

Q. In all the three years you dealt with them—

JUROR.—I would like to ask if they have to sign a contract each year for these cars?

A. Yes, sir.

JUROR.—The same old contract or a new form of contract?

A. Why, it is changed a little; it seems to be about the same thing.

Q. Have you ever read through and studied the language, and know the meaning of all the fine print in it? A. No, sir.

Q. These forty-eight odd paragraphs?

A. No.

Q. Now, Mr. Hathaway, in all the years you have dealt with them has there ever been a time, a single instance, but what you have had to pay for the car on delivery, to you?

A. No, we only pay the one price.

Q. And you pay that on delivery of the car?

A. Yes.

Q. And you treat the car as yours and go on and sell it or dispose of it as you like?

A. Yes, sir.

Q. You have done that for three years?

A. Four years I was with the Ford Motor Company?

Q. You were their agent over in Eastern Oregon? A. Yes, sir.

Q. Were you ever called upon to pay any any further price than the price you pay on delivery? A. No, sir.

Q. In all the 437 cars that you sold at Eugene, did you ever pay a cent extra over and above the price you were required to pay to get the cars?

A. No, sir.

Q. Were you ever asked to?

A. Never asked to.

Q. Did they ever claim anything different?

A. No, there was nothing.

12. From the testimony of V. W. Winchell, begin with the following question on page 223:

Q. You can look at the invoice and refresh your memory as to the exact amount paid.

Down to and including the following question and answer on page 227:

Q. Nothing whatever, in any way, shape or form?

A. No, sir.

13. From the testimony of V. W. Winchell, Plaintiff's Exhibit 3, pages 231–232, print the following:

Q. Now, one of the witnesses has testified that after this case was commenced, and after the cars were taken, somebody has gone into the First National Bank of Eugene and paid some debt of yours there. Did you ever authorize any one to do that?

A. No, sir I didn't know of that being done.

Q. Was it done with even your knowledge?

A. No, sir.

Q. Long after the action was commenced and your answer filed? A. Yes, sir.

14. From the testimony of F. M. Hathaway, on direct examination, Plaintiff's Exhibit 3, pages 253 and 254, print the following:

Q. What was the total you had paid for the cars?

A. I couldn't say the exact amount, but around sixteen thousand.

Q. $16,077.50? A. Yes, sir.

Q. The amount you had actually paid for the cars? A. Yes, sir.

Q. State to the jury whether or not there was any further sum to be paid by you?

A. No, sir.

Q. Then when you sold the cars you got your profit? A. Yes, sir.

Q. And if you didn't sell them you didn't get the profit. Is that right?

A. They remained ours.

15. From the testimony of witness F. B. Norman, recalled in rebuttal, and on cross-examination, at page 295:

Q. Well, you got your money out of it, didn't you? A. Yes, sir.

Q. And you made the cars to sell?

A. Yes, sir.

Q. And you shipped them to them to sell?

A. Yes, sir.

Q. And they were selling your cars only? Everything they sold were Ford cars?

A. Yes, sir.

16. From the testimony of V. W. Winchell, Plaintiff's Exhibit 3, pages 233 and 234, print the following:

Q. And the 5% bonus on the amount of thirty-six touring cars at $493.25, and the Sedan at $983.25?

A. Yes, less a partial payment probably six months ago, some time ago, on this bonus money.

Q. That is six months ago you received some bonus money? A. Yes, sir.

Q. And when you and Mr. Goden figured up the bonus money that he said he would get you, what did you figure it up at, at that time?

A. I can't give the exact amount.

Respectfully submitted,
ISHAM N. SMITH,
Attorney for Appellants.

[Endorsed]: No. 3436. In the United States Circuit Court of Appeals, for the Ninth Circuit. Ford Motor Company, a Corporation, Appellee, vs. F. M. Hathaway et al., Appellants. Appellants' Designation of Record to be Printed in the Transcript. Filed Jan. 8, 1920. F. D. Monckton, Clerk.

**Plaintiff's Exhibit—Check.**

FORD
Universal Car

FORD
Universal Car

FORD MOTOR COMPANY
BRANCH ACCOUNT

Portland, Oregon, Apr. 11, 1916. 191—
7416
No. ~~5816~~

Pay to the order of Eugene Ford Auto Co. $987.48
Nine hundred eighty-seven and 48/100 Dollars.

In settlement of account as stated on the back of this check.

FORD MOTOR COMPANY.
W. S. McNAMARA,
~~Local Manager~~
~~Cashier~~
Chief Clerk.

Lumbermans National Bank, Portland, Oregon.
Ent'd C. R. 62.
Audited E. P. J.
[Stamped across face:] MAIL. R.
[On reverse side:]

Endorsement of this check is sufficient acknowledgment of payment in full of the following account with the Ford Motor Company.

3% on business. 3296. Volume 1915, 1916. 987.48.

Pay to the order of any bank, banker or Trust Co. all prior endorsements guaranteed.

Apr. 14, 1916. The First National Bank. 96–17.

Eugene, Oregon. 96–17. Luke L. Goodrich, Cashier.
No receipt necessary.

EUGENE FORD AUTO CO.
By J. M. HATHAWAY.

[Endorsed]: No. E.–7768. Ford Motor Company vs. V. W. Winchell et al. Original Plaintiff's Exhibit—Check not Marked. G. H. Marsh, Clerk.

U. S. District Court, District of Oregon. Filed Jul. 31, 1919. G. H. Marsh, Clerk.

No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 7, 1920. F. D. Monckton, Clerk.

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**Plaintiff's Exhibit No. 1.**

[TELEGRAM.]

Portland, Oregon, May 24, 1916. 191—.

To Eugene Ford Auto Company,
Eugene, Oregon.

Be advised that your contract is cancelled. The territory and your stock will be taken over by Vick Brothers who will open a Branch at Eugene.

FORD MOTOR COMPANY.

FBN.

Telephoned 9:50. E. M.

Defendant's Exhibit "E."

[Endorsed]: E.–7768. Ford Motor Company vs. V. W. Winchell et al. Original Plaintiff's Exhibit 1. G. H. Marsh, Clerk.

U. S. District Court. Filed Sep. 6, 1916. G. H. Marsh, Clerk.

U. S. District Court, District of Oregon. Filed Jul. 31, 1919. G. H. Marsh, Clerk.

No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 7, 1920. F. D. Monckton, Clerk.

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**Plaintiff's Exhibit No. 3.**

AMENDED COMPLAINT.

Plaintiff complains and for cause of actions, alleges:

I.

That it is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Michigan, with its factory and principal place of business at Highland Park, Michigan, and duly authorized to transact business as a foreign corporation in the State of Oregon, with a factory branch and principal place of business in the State of Oregon in Portland, Multnomah County Oregon.

II.

That E. A. Farrington and L. A. Houck are copartners doing business under the firm name and style of Pacific Transfer Company, and are engaged in the warehouse and transfer business in the City of Eugene, Oregon.

III.

That H. Sandgathe is an individual doing business as the Springfield Garage, and is in the automobile business at Springfield, Oregon.

IV.

That V. W. Winchell and F. M. Hathaway are copartners, doing business as the Eugene Ford Auto

Company, and are in the automobile business at Eugene, Oregon.

V.

That A. Wilhelm and John Doe Wilhelm are co-partners doing business as A. Wilhelm & Son, and are in the automobile business at Junction City, Oregon.

VI.

That heretofore and on or about September 10th, 1915, plaintiff and defendants V. W. Winchell and F. M. Hathaway entered into a contract whereby said defendants were to represent the plaintiff as limited agents. Pursuant to said contract plaintiff consigned to the said defendants in this paragraph mentioned the following numbered Ford automobiles: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062282, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066343, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067615, Sedan 658934, 1116486.

VII.

That thereafter plaintiff pursuant to the terms of said contract with the defendants mentioned in the last preceding paragraph, duly cancelled said contract and offered $16,077.50, the money advanced on said consignment of automobiles by the above-mentioned defendants to said defendants in payment and satisfaction as provided for in said contract, and that defendants then refused and ever since have refused to receive the same; that the plaintiff was at the

time of said tender ready and willing and able to pay said amount thereof to the defendants, and that since said offer plaintiff has been ready, willing and able to pay the sum of thirty-four hundred and one and 12-100 dollars ($3401.12), which amount is the defendants' Winchell and Hathaway, property in said cars at this time, and that plaintiff now brings the said sum of thirty-four hundred and one and 12-100 dollars into this court in this action, ready to be paid to defendants.

VIII.

That the amount involved in this action is in excess of three thousand dollars, and within the jurisdiction of this Court.

IX.

That at the time of the commencement of this action said automobiles above described are within the State of Oregon and the jurisdiction of this Court, and in the possession of the defendants herein; that the plaintiff is the present owner and entitled to the immediate possession of said automobiles; that demand has been made upon the defendants for the possession of said automobiles and defendants have refused to give plaintiff possession of said automobiles.

X.

That said automobiles are of the value of sixteen thousand seventy-seven and 50-100 dollars ($16,077.50).

Wherefore plaintiff demands judgment against the defendants for the recovery of Ford automobiles as particularly set forth in Paragraph VI of this

complaint, or for $16,077.50, the value thereof; $1,000.00 damages for the detention thereof; and for the costs and disbursements of this action.

E. L. McDOUGAL,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, E. L. McDougal, being first duly sworn, depose and say that I am the plaintiff's attorney in the above-entitled action, and that the foregoing proposed amended answer is true as I verily believe; that I make this verification because the attorney-in-fact is without the state and I am acquainted with the facts.

(Sgd.) E. L. McDOUGAL.

Subscribed and sworn to before me this 14th day of August, 1916.

[Seal] (Sgd.) HOMER T. SHAVER,
Notary Public for Oregon.

My commission expires July 19, 1920.

Filed August 14th, 1916. G. H. Marsh, Clerk.

And on the 14th day of June, 1916, there was duly filed in said Court an Answer, in words and figures as follows, to wit:

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

E. A. FARRINGTON and L. A. HOUCK, Copartners Doing Business Under the Name and Style of PACIFIC TRANSFER COMPANY; J. DANIELS, H. SANDGATHE, Doing Business as SPRINGFIELD GARAGE; V. W. WINCHELL and F. M. HATHAWAY, Copartners Doing Business Under the Name and Style of EUGENE FORD AUTO COMPANY, and A. WILHELM and JOHN DOE WILHELM, Copartners, Doing Business Under the Firm Name and Style of A. WILHELM & SON,
Defendants.

Come now the defendants and answering the complaint herein admit the allegations contained in Paragraph I, in Paragraph II, in Paragraph III, in Paragraph IV, and in Paragraph V of the Complaint herein.

Deny each and every other allegation contained in said complaint except as hereinafter expressly admitted, and except as hereinafter alleged.

For a further and separate answer and defense to said complaint these defendants allege that V. W. Winchell and F. M. Hathaway prior to the time of the commencement of this action had purchased all the Ford automobiles described in said complaint, and had paid the plaintiff the full purchase price required to be paid from them to plaintiff, and no further payments were to be made thereon; and, thereupon, the plaintiff delivered said automobiles to defendants and title to the same passed from plaintiff to defendants, and defendants became the owners thereof, and prior to the time of the commencement of this action, and at the time of the commencement thereof were, and are now, the owners thereof, and entitled to the immediate and exclusive possession of the said automobiles.

For a further and separate answer and defense to said complaint, the defendants V. W. Winchell and F. M. Hathaway reallege all of the allegations contained in the first separate answer contained therein, and these defendants further allege that ever since the contract mentioned in the complaint was made between plaintiff and these defendants, plaintiff has dealt with these defendants in the sale of automobiles, so that when the defendants paid to plaintiff the amount required to take up the bill of lading sent for collection by the plaintiff with the automobiles delivered by plaintiff to defendants, and paid the freight and draft attached to such bill of lading, delivery was made of said automobiles to defendants and such drafts were drawn by plaintiff against defendants for the full sum required to be paid by de-

fendants to plaintiff as the purchase price of said automobiles, and upon such payment and delivery plaintiffs have received said automobiles and dealt with the same as their own, with the knowledge and acquiescence of plaintiff; and the contract between plaintiff and defendants ever since the same was made has been construed by the parties, the same being the contract under which plaintiff sold and defendants purchased the said automobiles, so that upon payment of such sight drafts and the delivery of the automobiles upon the payment of the same and the freight, title and delivery to such automobiles was completed and passed from plaintiff to defendants and that all of the automobiles mentioned in the complaint were purchased from plaintiff and paid for by defendants upon the terms hereinafter set forth; and long prior to the institution of this action, and not otherwise; and that at the time of the commencement of this action and for a long time prior thereto defendants were and are the exclusive owners of said automobiles and each one of the same and entitled to the immediate and exclusive possession thereof, and were in the lawful possession thereof at the time of the commencement of this action.

For a third further and separate answer and defense these defendants allege the truth to be: That prior to the commencement of this action and on or about the 29th day of May, 1916, the plaintiff and the defendants V. W. Winchell and F. M. Hathaway had a settlement of the contract existing between plaintiff and defendants wherein and whereby the plaintiff and defendants adjudged their mutual

accounts and reciprocal claims, and wherein and whereby the plaintiff agreed that the defendants were the owners of and did convey to defendants V. W. Winchell and F. M. Hathaway all claims of title on the part of plaintiff to the automobiles described in the complaint and each and every one thereof, and relinquished every claim of possession to the said automobiles and each and every one thereof.

For a fourth further and separate answer and defense and counterclaim the defendants V. W. Winchell and F. M. Hathaway allege that during all the time mentioned herein they were, and are now, copartners doing business under the firm name and style of Eugene Ford Auto Company, and had duly registered their assumed business name with the County Clerk of Lane County, Oregon, and were engaged in a general automobile business in Lane County, Oregon, and engaged in buying and selling Ford automobiles, parts, fixtures, accessories, supplies and materials used in said business and incident thereto.

That at the time of the commencement of this action these defendants were, and are now, the owners of the Ford automobiles mentioned in the complaint and being automobiles numbered and specifically designated in Paragraph VI of the complaint, and being Ford automobiles: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062232, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066345, 1078972, 1017449, 1078965, 1078948, 1067359,

1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067415, Sedan 658934, 1116486.

That said automobiles were and are of the value of $493.25 for each of said cars, except for the Sedan which was and is of the value of $798.25.

That defendants at the time of the commencement of this action, as such owners of said automobiles, were entitled to the immediate and exclusive possession of the same; and on or about Monday, the 5th day of June, 1916, the plaintiff instituted the above cause and wrongfully and unlawfully and maliciously caused the Writ of Replevin to be issued out of this court and filed an affidavit and bond thereon and demanded immediate possession of the said automobiles; and at the said time the plaintiff well knew that said automobiles, and each and everyone thereof, were the exclusive property of these answering defendants, V. W. Winchell and F. M. Hathaway; and that said defendants were entitled to the immediate and exclusive possession thereof, and plaintiff caused said Writ of Replevin to be issued herein and the said automobiles to be seized maliciously, wrongfully and unlawfully for the purpose of destroying the business of these defendants and injuring their financial standing and credit and depriving them of said property of the value of $18,555.25, as aforesaid, and to drive them out of business and to prevent them from conducting their automobile and garage business hereinbefore described.

That at said time these defendants had an established business in dealing in automobile accessories, appurtenances and supplies from which they were

then making and had been making for several months last past a regular profit of approximately Three Hundred Dollars per month.

That by the wrongful acts of the plaintiff, as herein alleged, the business of these defendants has been destroyed, their business credit ruined, their standing in the mercantile world has been discredited and they have been injured and damaged by the malicious acts of defendants, as alleged, to the sum of Twenty-five Thousand Dollars, in addition to the general damages hereinbefore set forth, to wit: value of the automobiles and the property aggregating $18,555.25.

That the plaintiff is a corporation of great wealth and extensive business associations and power in the commercial world, and in committing the acts herein set forth, it has used its wealth, standing and power to harass and annoy these defendants by the issuance of legal process to which plaintiff knew it was not entitled.

WHEREFORE, defendants demand judgment that the defendants V. W. Winchell and F. M. Hathaway have judgment against the plaintiff for the recovery of the Ford automobiles, as particularly set forth in the answer herein, or for $18,555.25, the value thereof; and for Twenty-five Thousand Dollars damages; and for their costs and disbursements in this action.

I. N. SMITH,
L. BILYEU and
THOMPSON & HARDY,
Attorneys for Defendants.

State of Oregon,
County of Lane,—ss.

I, V. W. Winchell, being first duly sworn, depose and say that I am one of the defendants in the above-entitled action; and that the foregoing answer is true as I verily believe.

V. W. WINCHELL.

Subscribed and sworn to before me this 13th day of June, 1916.

[Notarial Seal]

HELMUS W. THOMPSON,
Notary Public for the State of Oregon.

My commission expires March 27, 1917.

Filed June 14, 1916.

G. H. MARSH,
Clerk.

And on the 28th day of July, 1916, there was duly filed in said court a Reply to the Answer, in words and figures as follows, to wit:

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

E. A. FARRINGTON, and L. A. HOUCK, Copartners, Doing Business Under the Name and Style of PACIFIC TRANSFER COMPANY, J. DANIELS, H. SANDGATHE, Doing Business as SPRINGFIELD GAR-

AGE, V. W. WINCHELL and F. M. HATHAWAY, Copartners, Doing Business Under the Name and Style of EUGENE FORD AUTO COMPANY, and A. WILHELM and JOHN DOE WILHELM, Copartners, Doing Business under the Firm Name and Style of A. WILHELM & SON,

Defendants.

Comes now the plaintiff, Ford Motor Company, a corporation, and for reply to the first further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff, replying to the second further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff, replying to the third further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

And plaintiff, replying to the fourth further and separate answer and defense of the defendants, denies the same, and the whole thereof, except as to the matters therein contained which are substantially pleaded in plaintiff's complaint on file herein.

WHEREFORE, plaintiff having fully replied to the further and separate answers and defenses of the

defendants, prays judgment as heretofore asked for in the complaint on file herein.

E. L. McDOUGAL,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, E. L. McDougal, being first duly sworn, depose and say that I am the attorney for plaintiff corporation in the above entitled action, that the foregoing reply is true as I verily believe. I further state that I have personal knowledge of the facts herein contained and verify this reply for the reason that the proper officer for service of this corporation is not now within the state.

(Sgd.) E. L. McDOUGAL.

Subscribed and sworn to before me this 28th day of July, 1916.

[Seal] (Sgd.) F. C. McDOUGAL,
Notary Public for Oregon.

My commission expires July 1, 1920.

AND AFTERWARDS, to wit: On the 6th day of September, 1916, there was duly filed in said court a verdict in words and figures as follows, to wit:

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR CAR COMPANY, a Corporation,
Plaintiff,

vs.

E. A. FARRINGTON, and L. A. HOUCK, Copartners, as PACIFIC TRANSFER COMPANY,

J. DANIELS, H. SANDGATHE, V. W. WINCHELL and F. M. HATHAWAY, Copartners as EUGENE FORD AUTO COMPANY, and A. WILHELM and JOHN DOE WILHELM, Copartners, as A. WILHELM & SON,

Defendants.

We, the jury, duly empanelled and sworn to try the above cause, find our verdict for the defendants; and, that the defendants, V. W. Winchell and F. M. Hathaway, copartners doing business as Eugene Ford Auto Company, were at the time this action was commenced and are now entitled to the immediate possession and are entitled to the return of the Ford automobiles described in the complaint and the answer herein and being the following numbered Ford automobiles, to wit: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062280, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066345, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067415, sedan 658934, 1116486, and in case a return cannot be had we find the value of the said automobiles to be $16,077.50, and single damages sustained by the defendants, V. W. Winchell and F. M. Hathaway, partners as aforesaid, to be the sum of $6,000.00.

GEORGE KEECH,
Foreman.

AND AFTERWARDS, to wit, on Monday, the 11th day of September, 1916, the same being the

60th judicial day of the regular July term of said court; present: the Honorable R. S. BEAN, United States District Judge, Presiding, the following proceedings were had in said cause, to wit:

JUDGMENT.

Thereupon, on motion of said defendants for judgment on the verdict heretofore filed and entered herein,

IT IS CONSIDERED, that said defendants, V. W. Winchell and F. M. Hathaway, copartners doing business as the Eugene Ford Auto Company, do have and recover of and from the plaintiff, Ford Motor Car Company, a corporation, the immediate possession and return of the Ford automobiles described in the complaint and answer herein, and being the following numbered Ford automobiles, to wit: 1115957, 1116510, 1115933, 1068830, 1067382, 1115500, 1115791, 1115931, 1115943, 1115941, 1116479, 1062282, 1116461, 1067484, 1116008, 1066396, 1116459, 1079104, 1079064, 1078975, 1079033, 1066345, 1078972, 1017449, 1078965, 1078948, 1067359, 1067377, 1067426, 1008770, 1079019, 1079020, 1067411, 1068781, 1067415, sedan 658934, 1116486.

AND IT IS FURTHER ORDERED that in case return of said automobiles cannot be had that said defendants, V. W. Winchell and F. M. Hathaway, copartners, doing business as the Eugene Ford Auto Company, do have and recover of and from the said plaintiff, Ford Motor Car Company, a corporation, the sum of $16,077.50, the value of the said automobiles, and

IT IS FURTHER CONSIDERED that said defendants, V. W. Winchell and F. M. Hathaway, copartners, doing business as the Eugene Ford Auto Company, have and recover of and from the said plaintiff, Ford Motor Car Company, a corporation, damages in the sum of $6,000.00, together with costs and disbursements herein taxed at $68.55.

Whereupon, on motion of said plaintiff,

IT IS ORDERED that it be and it is hereby allowed thirty days from this date within which to file a motion to set aside said judgment and for a new trial herein, and in which to submit a Bill of Exceptions, and

IT IS FURTHER ORDERED that issuance of execution upon the said judgment be stayed until after the termination of the said motion for new trial.

R. S. BEAN,
United States District Judge.

Filed September 11, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on the 8th day of November, 1916, there was duly filed in said court a petition for new trial in words and figures, as follows, to wit:

*In the District Court of the United States for the District of Oregon.*

FORD MOTOR COMPANY, a Corporation,
Plaintiff,

vs.

E. A. FARRINGTON, V. W. WINCHELL and F. M. HATHAWAY et al.,
Defendants.

COMES NOW the plaintiff in the above entitled action appearing by Messrs. Platt & Platt and E. L. McDougall, its attorneys of record, and petitions the Court for a new trial in the above entitled action and for grounds of such petition alleges:—

I.

That it appears from the undisputed testimony introduced upon the trial of the above entitled cause that the plaintiff was compelled to and did pay to The First National Bank of Eugene, Oregon, three notes of the defendants, V. W. Winchell and F. M. Hathaway, aggregating the sum of $12,676.38, each of which notes was secured by a chattel mortgage on the automobiles sought to be recovered from the possession of the defendants in the above entitled action, which notes the plaintiff was compelled to pay and did pay in order to free the automobiles in controversy from the liens of the chattel mortgages given to secure said notes, in order to enable it to maintain an action for the replevin of said automobiles, and the Court failed and refused to instruct the jury at the trial of the above entitled action that the plaintiff was entitled to offset the amounts paid in satisfaction of said notes against any amounts which they might find in favor of the defendants and against the plaintiff.

II.

Plaintiff petitions for a new trial in the above entitled action upon the further ground that the verdict of the jury made and entered in the above entitled action, and the judgment entered thereon contravenes the instructions given by the Court upon the

trial of the above entitled cause in that it allows to the defendants as damages profits on the sales of automobiles in addition to the value of the cars therein and thereby expressly fixed at the sum of $16.077.50, and said judgment is contrary to the evidence introduced upon the trial of the above entitled cause in that it appears from the undisputed evidence introduced upon the trial of the above entitled cause and the law applicable to the facts proven as evidenced by the instructions of the Court made upon the trial of the above entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants, V. W. Winchell and F. M. Hathaway, prior to the institution of the above entitled action, and the defendants are not entitled to any damages arising from the action of the plaintiff in terminating its contract or in asserting its right to the possession of the automobiles in controversy, and that no evidence was introduced upon the trial of the above entitled cause upon which any claim for damages for the sum of $6,000, or any sum in excess of $2414.75 could properly be based, and said verdict and judgment are contrary to the evidence introduced upon the trial of the above entitled cause, and that it appears from the undisputed evidence introduced upon the trial of the above entitled cause that the defendants, V. W. Winchell and F. M. Hathaway, had sold their business to a third party at or about the time of the cancellation of their contract with the plaintiff in the above entitled cause and received for such transfer a valuable consideration.

III.

That the verdict rendered against the plaintiff in the above entitled cause is contrary to and against the weight of evidence introduced upon the trial of the above entitled cause.

IV.

Plaintiff further petitions the Court for an order modifying the judgment entered in the above entitled cause on the .. day of September, 1916, by offsetting against the sum of $16,077.50 therein awarded to the defendants in lieu of the machines sought to be replevied in the above entitled action the sum of $12,676.38, being the amount of money paid by the plaintiff to The First National Bank of Eugene, Oregon, for the benefit of and in payment and discharge of the three notes of the defendants, V. W. Winchell and F. M. Hathaway, given to the First National Bank of Eugene, Oregon, as payee, each of which said notes were secured by a chattel mortgage upon the automobiles sought to be replevied in the above entitled action, which facts appear from the undisputed evidence introduced upon the trial of the above entitled cause, and for grounds of such petition alleges that the plaintiff was compelled to and did pay the said notes of the defendants, V. W. Winchell and F. M. Hathaway, the first note being in the sum of $2800 bearing date April 22d, 1916; the second note being in the sum of $2800 bearing date of May 1st, 1916, and the third note being in the sum of $8,400 bearing date May 24th, 1916, each of which notes was secured by a chattel mortgage upon the property sought to be replevied in the above entitled

action, in order to free the property involved in the above entitled cause from the liens of said mortgages prior to the institution of its action for the replevin of said automobiles.

V.

Plaintiff further petitions for an order of this Court modifying the judgment heretofore entered in the above entitled cause on the —— day of September, 1916, by striking therefrom the sum of $6,000 allowed to the defendants as damages on account of the alleged erroneous action of the plaintiff in taking possession of the automobiles involved in the above entitled controversy upon the grounds and for the reason that such is not a proper item of damage, because, it appears from the undisputed evidence introduced upon the trial of the above entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants, V. W. Winchell and F. M. Hathaway, prior to the institution of the above entitled action, and the defendants are, therefore, not entitled to any damages arising from the action of the plaintiff in asserting its rights to the possession of the automobiles in controversy and its termination of its contract with the defendants, V. W. Winchell and F. M. Hathaway, and that no evidence was issued upon the trial of the above entitled cause upon which any claim or judgment for damages in the sum of $6,000 could properly be based, and that such allowance of $6,000 for damages, or any other sum in excess of $2,414.75 is in contravention of the instructions of the Court directing the jury that they should not allow the value of the ma-

chines in controversy, and at the same time allow any claim for loss of profits arising from an inability to sell said automobiles, and upon the further grounds that it appears from the undisputed evidence introduced upon the trial of the above entitled cause that the business of the defendants, V. W. Winchell and F. M. Hathaway, had been sold to a third party at or about the time of the cancellation of the said defendant's contract with the plaintiff in the above entitled action, and said defendants received therefor a valuable consideration.

PLATT & PLATT and
E. L. McDOUGAL,
Attorneys for Plaintiff.

Filed 8th day of November, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on Tuesday the 2d day of January, 1917, the same being the 49th judicial day of the regular November term of said court, present: the Honorable R. S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

ORDER DENYING MOTION FOR NEW TRIAL.

This cause was heard upon motion of the plaintiff for new trial herein, and for an order modifying the judgment heretofore entered in this cause, and was argued by Mr. Hugh Montgomery of counsel for plaintiff, and by Chas. H. Hardy of counsel for said defendants, on consideration whereof

IT IS ORDERED AND ADJUDGED that each of said motions be and the same is hereby denied, and on motion of said plaintiff

IT IS FURTHER ORDERED that said plaintiff be and it is hereby allowed ten days from this date within which to submit a Bill of Exceptions herein.

Filed January 2d, 1917.

G. H. MARSH,
Clerk.

## ASSIGNMENT OF ERRORS.

### VI.

The above entitled court erred in sustaining the defendants' motion to take from the consideration of the jury all of the evidence offered by the plaintiff as to the payment to The First National Bank, of Eugene, Oregon, of the amount of certain liens imposed upon the automobiles in controversy by the defendants in favor of the said First National Bank, of Eugene, Oregon, and in refusing to instruct the jury that the plaintiff was entitled to an offset against any claim of the defendants in the amount of money paid to the said First National Bank of Eugene, Oregon, to remove the liens imposed upon the automobiles in controversy by the defendants in the above entitled action.

* * * * * * * * *

### XII.

The above entitled court erred in overruling and not sustaining plaintiff's motion for a modification of the judgment entered in the above entitled action by which motion the plaintiff requested the court to offset against the judgment entered in the above entitled cause the sum of $12,676.38, being the amount of money paid by the plaintiff to the First National Bank, of Eugene, Oregon, for the benefit of defend-

ants, in payment and discharge of the liens imposed by the defendant upon the automobiles in controversy, and to further modify said judgment by eliminating therefrom the $6,000.00 allowed to the defendants as damages on account of the alleged erroneous action of the plaintiff in taking possession of the automobiles, because no evidence was introduced upon the trial of said cause showing that the defendants had been specially damaged in the sum of $6,000.00, or any sum, and for the further reason that the plaintiff had a legal right to, and did, terminate its contract with the defendants, and that the undisputed evidence established that the defendants V. W. Winchell and F. M. Hathaway had sold their business to a third party prior to the cancellation of the contract with the Plaintiff.

BILL OF EXCEPTIONS.

EXCEPTION XI, SUBDIVISION B.

"I instruct you that the defendants have failed to prove damages in this case and that the only question for you to decide is who are the owners and entitled to the possession of the automobiles in question and their value."

To the action of the Court in refusing to give plaintiff's requested instruction B, plaintiff duly excepted, which exception was allowed.

F. B. Norman, a witness called on behalf of the plaintiff, testified as follows:

Q. What became of this $12,676.38 that was sent down to Eugene for the purpose of returning to the defendants in this case?

A. That was paid to the bank on mortgages they had given for these cars.

Mr. SMITH.—We move to strike that out if the Court please. There was no payment before this action was begun at all, and no payment to us, or for us, or with our authority, to anybody.

COURT.—They will have to show that was done with the authority of the defendants, or paid to them before the action was commenced, as I understand it.

Q. For what purpose did you say this was paid to the bank, this money?

A. Money that they had advanced on these cars for the Eugene Ford Auto Company.

Q. Do you know whether or not it was impossible for the Ford Motor Car Company to get possession of these cars, as far as the bank was concerned, until this money had been paid to the bank?

Mr. SMITH.—Objected to; that calls for a conclusion of the witness. Let him state the facts if they will justify such a position, and the man knows.

COURT.—I think the objection is well taken, and I don't see that it has anything to do with the merits of this particular case on trial now.

Mr. SMITH.—They took the cars under the writ. It is admitted here that the Deputy Marshal was down there and took the cars immediately after Mr. McDougal's brother made the alleged demand on that Monday morning.

F. B. Norman, the said witness, on behalf of the plaintiff, further testified as follows upon cross-examination:

Q. At what date do you claim you gave the First

National Bank at Eugene the twelve thousand dollars?

A. Sixteen thousand, I think it was, the value of the cars. I don't remember the dates now. It was at the time, though, after the cancellation went into effect.

Q. You don't know the date?

A. I haven't it here, no.

Q. You don't know how much you gave the First National Bank, either, do you?

A. Well, I don't remember the figures.

Q. It was after this action was begun? You know that, don't you? A. Not that I know of, no.

Q. Don't you know, as a matter of fact, that it was not only after that action was begun, but after the answer was filed? A. No, sir.

Q. You don't know that that statement is not true, though, do you?

A. There was no action begun at the time I authorized this money from the Lumbermens Bank to be sent to Eugene.

Q. No, I mean at the time you paid it to the bank. You say you paid some money to the First National Bank at Eugene. Don't you know, as a matter of fact, you didn't do that until after this action was commenced and after the answer was filed?

A. That is probably so, I wouldn't say.

V. W. Winchell, a witness called on behalf of the defendants, testified as follows:

Q. Now, one of the witnesses has testified that after this case was commenced, and after the cars were taken, somebody has gone into the First National

Bank of Eugene and paid some debts of yours there. Did you ever authorize any one to do that?

A. No, sir. I didn't know of that being done.

Q. Was it done with even your knowledge?

A. No, sir.

Q. Long after the action was commenced and your answer filed? A. Yes, sir.

Thereupon the defendants made the following motion:

Mr. SMITH.—There are two or three motions in relation to the record we want to make to keep the record straight on the evidence. We first move to strike from the consideration of the jury all evidence offered on behalf of the plaintiff as to the payment of the First National Bank of the twelve thousand dollars on the ground that it was not authorized by the defendants or made through any privity of relationship requiring plaintiff to make such payment. Upon the further ground it was a voluntary payment if made at all and cannot be charged to the defendants under any circumstances.

And thereupon the Court made the following ruling:

COURT.—I think that is well taken as far as constitutes any defense in this case.

To the action of the Court in taking from the consideration of the jury the claim of the plaintiff for the amount of money paid by the plaintiff to the First National Bank of Eugene, Oregon, the amount of the lien imposed upon the automobiles in controversy by the defendants, the plaintiff duly excepted, which exception was duly allowed.

## PETITION FOR NEW TRIAL OR MODIFICATION OF JUDGMENT.

Comes now the plaintiff in the above-entitled action appearing by Messrs. Platt & Platt and E. L. McDougal, its attorneys of record, and petitions the Court for a new trial in the above-entitled action and for grounds of such petition alleges:

I.

That it appears from the undisputed testimony introduced upon the trial of the above-entitled cause that the plaintiff was compelled to and did pay to The First National Bank of Eugene, Oregon, three notes of the defendants V. W. Winchell and F. M. Hathaway, aggregating the sum of $12,676.38, each of which notes was secured by a chattel mortgage on the automobiles sought to be recovered from the possession of the defendants in the above-entitled action, which notes the plaintiff was compelled to pay and did pay in order to free the automobiles in controversy from the liens of the chattel mortgages given to secure said notes, in order to enable it to maintain an action for the replevin of said automobiles, and the Court failed and refused to instruct the jury at the trial of the above-entitled action that the plaintiff was entitled to offset the amounts paid in satisfaction of said notes against any amounts which they might find in favor of the defendants and against the plaintiff.

II.

Plaintiff petitions for a new trial in the above-entitled action upon the further ground that the verdict of the jury made and entered in the above-entitled action and the judgment entered thereon contravenes

the instructions given by the Court upon the trial of the above-entitled cause, in that it allows to the defendants as damages profits on the sales of automobiles in addition to the value of the cars therein and thereby expressly fixed at the sum of $16,077.50, and said judgment is contrary to the evidence introduced upon the trial of the above-entitled cause, in that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause and the law applicable to the facts proven as evidenced by the instructions of the Court made upon the trial of the above-entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants, V. W. Winchell and F. M. Hathaway, prior to the institution of the above-entitled action, and the defendants are not entitled to any damages arising from the action of the plaintiff in terminating its contract or in asserting its right to the possession of the automobiles in controversy, and that no evidence was introduced upon the trial of the above-entitled cause upon which any claim for damages for the sum of $6,000, or any sum in excess of $2,414.75 could properly be based, and said verdict and judgment are contrary to the evidence introduced upon the trial of the above-entitled cause, and that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the defendants, V. W. Winchell and F. M. Hathaway, had sold their business to a third party at or about the time of the cancellation of their contract with the plaintiff in the above-entitled cause and received for such transfer a valuable consideration.

III.

That the verdict rendered against the plaintiff in the above-entitled cause is contrary to and against the weight of evidence introduced upon the trial of the above-entitled cause.

IV.

Plaintiff further petitions the Court for an order modifying the judgment entered in the above-entitled cause on the 11th day of September, 1916, by off-setting against the sum of $16,077.50, therein awarded to the defendants in lieu of the machines sought to be replevined in the above-entitled action the sum of $12,676.38, being the amount of money paid by the plaintiff to The First National Bank of Eugene, Oregon, for the benefit of and in payment and discharge of the three notes of the defendants, V. W. Winchell and F. M. Hathaway, given to The First National Bank of Eugene, Oregon, as payee, each of which said notes were secured by a chattel mortgage upon the automobiles sought to be replevined in the above-entitled action, which facts appear from the undisputed evidence introduced upon the trial of the above-entitled cause, and for grounds of such petition alleges that the plaintiff was compelled to and did pay the said notes of the defendants, V. W. Winchell and F. M. Hathaway, the first note being in the sum of $2,800, bearing date April 22d, 1916, the second note being in the sum of $2,800, bearing date May 1st, 1916, and the third note being in the sum of $8,400, bearing date May 24th, 1916, each of which notes was secured by a chattel mortgage upon the property sought to be replevined in the above-entitled action, in order to free

the property involved in the above-entitled cause from the liens of said mortgages prior to the institution of its action for the replevin of said automobiles.

V.

Plaintiff further petitions for an order of this court modifying the judgment heretofore entered in the above-entitled cause on the 11th day of September, 1916, by striking therefrom the sum of $6,000 allowed to the defendants as damages on account of the alleged erroneous action of the plaintiff in taking possession of the automobiles involved in the above-entitled controversy upon the grounds and for the reason that such is not a proper item of damage, because it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the plaintiff had a legal right to and did terminate its contract with the defendants, V. W. Winchell and F. M. Hathaway, prior to the institution of the above-entitled action, and the defendants are, therefore, not entitled to any damages arising from the action of the plaintiff in asserting its rights to the possession of the automobiles in controversy and its termination of its contract with the defendants V. W. Winchell and F. M. Hathaway, and that no evidence was introduced upon the trial of the above-entitled cause upon which any claim or judgment for damages in the sum of $6,000 could properly be based, and that such allowance of $6,000 for damages, or any other sum in excess of $2,414.75 is in contravention of the instructions of the Court directing the jury that they should not allow the value of the machines in controversy and at the same time allow any claim for loss of profits arising

from an inability to sell said automobiles, and upon the further grounds that it appears from the undisputed evidence introduced upon the trial of the above-entitled cause that the business of the defendants, V. W. Winchell and F. M. Hathaway, had been sold to a third party at or about the time of the cancellation of the said defendants' contract with the plaintiff in the above-entitled action, and said defendants received therefor a valuable consideration.

PLATT & PLATT and
E. L. McDOUGAL,
Attorneys for Plaintiff."

which said petition for a new trial was, after argument by the respective counsel for plaintiff and defendants, and after due consideration by the Court, denied by the said Court on the 2d day of January, 1917, to which ruling the plaintiff then and there excepted, which exception was allowed.

TESTIMONY OF CHARLES E. GODEN.

Q. What was done with this $16,077.50?

A. Why, after the United States Marshal had taken the cars and they were in his possession three days, I was notified, through my office in Portland—

Mr. SMITH.—Just a minute. That is objected to, if the Court please. Any conversation between him and the plaintiff, or any instructions that he gave after the action was brought is wholly immaterial.

COURT.—I don't think it is material what became of the sixteen thousand.

Mr. SMITH.—As long as he didn't pay it to us, that is all there is to it.

COURT.—As long as it didn't get to the defendants.

TESTIMONY OF WILLIAM S. McNAMARA.

Cross-examination.

Questions by Mr. HARDY.—You say you are the chief clerk that had charge of the Winchell and Hathaway matters? A. Yes, sir.

Q. Can you identify, then, these invoices and drafts for these automobiles that were invoiced to them, and paid for by them? I will ask you if these were issued out of your office in payment of the automobiles in question, these being the invoices and drafts by which the Ford Motor Car Company received payment?

A. That is the form we used in connection with our business.

Q. And those are the accounts that you had charge of, of course, and you can identify them?

A. Yes, sir.

Mr. HARDY.—We will offer in evidence the invoices and drafts, showing payment for these automobiles.

Mr. McDOUGAL.—No objection.

Mr. HARDY (reading): "Ford Motor Company, sold to Eugene Ford Auto Company, Eugene, Oregon, 8 touring cars, 56 tread, $3520.00; less 15%, $528.00; $2992.00. Prop. freight Detroit to Portland, $335.-00— $3327.54." "Ford Motor Company, sold to Eugene Ford Auto Company, 8 touring cars, 56" tread." "Ford Motor Company, sold to Eugene Ford Auto Company, 8 touring cars, 56" tread." One of these is "Sold Eugene Ford Auto Company, Eugene, Oregon, May 25, 1916, assembly stock; date

shipped May 25, 1916. Terms strictly net cash. One runabout 56" tread, $390.00, less 15%, $58.50, balance $331.50. Retail freight Detroit to Portland, $53.25; 10 gallons gas and 4 quarts oil, $2.35. Total $387.10." This last being a car that was driven up to Eugene, instead of going by freight, and paid for here.

A. That last car in Portland was delivered to a traveling man in Portland for their account, a man by the name of Matthews.

Mr. McDOUGAL.—Was not in this consignment at all.

A. Was not in the carload.

COURT.—One of the cars in controversy; was delivered here to a traveling man in Portland on account of Eugene.

A. No, it was not one of the cars that was replevined.

COURT.—I beg pardon; I thought it was.

Mr. HARDY.—It was simply offered in connection with the statement. This witness testified as to the course of dealing; this witness has testified that he knew about their account, and I offer this for the purpose of showing the course of dealing, and as a part of the cross-examination in connection with the testimony of their witness.

COURT.—I think it is competent for that purpose; I thought it was one of the cars in controversy.

Mr. McDOUGAL.—This is introduced to show custom?

Mr. HARDY.—Goes to show we bought and paid for the cars; that is all it is offered to show.

Mr. McDOUGAL.—We object to its introduction on this.

COURT.—I think it is competent.

Mr. SMITH.—I will ask this witness some questions, with your Honor's permission.

Questions by Mr. SMITH.—Mr. McNamara, I will show you this invoice dated March 13, 1916, and the draft dated March 14, 1916; these two constitute the papers in one transaction, don't they; that is, that draft accompanied the invoice?

A. Accompanied the bill of lading.

Q. Well, that is the draft made on this invoice, then?

A. Well, I couldn't state as to that because it does not give the car number.

Q. How much is the draft for? A. $3327.54.

Q. How many cars in the invoice? A. Eight.

COURT.—You say the draft accompanied the bill of lading. The cars were shipped to these people, bill of lading with draft attached? A. Yes, sir.

COURT.—And you drew on them for the amount and sent it accompanied by bill of lading?

A. Yes, sir.

COURT.—And before they got the cars, they had to pay that draft?

A. Yes, and invoice sent to them for checking record.

Q. This is the invoice that accompanied that draft as a checking measure? A. Yes, sir.

Mr. SMITH.—I ask that the draft and invoice be marked as one exhibit.

Marked DEFENDANTS' EXHIBIT "A."

Ford Ford Motor Company Invoice

Portland

Sold to Eugene Ford Auto Company,
Eugene, Oregon.

Charge same. Order date Mar. 13, 1916.

Terms strictly cash, Norman Assg. stock

Date shipped Mar. 7, 1916.

FARMERS AND MERCHANTS BANK,

Shipped via

| | |
|---|---|
| 8 Touring cars, 56" tread | $3520.00 |
| Less 15% | 528.00 |
| | $2992.00 |
| Prop. freight Detroit to Portland | 335.54 |
| | $3327.54 |

Motor Nos.
1067411
1067426
1067396
1067382
1068830
1067377
1068781
1067415

Dated at Portland, Oregon, Mar. 14, 1916.

$3327.54 No. 1822

Ford Ford

At sight, on arrival of goods, pay to the order of

(Bank) Lumbermens National Bank

Thirty-three hundred twenty-seven and 54/100 Dollars (with exchange)

Value received and charge to the account of S. P. 6686

FORD MOTOR COMPANY,
R. VAN HARRISEEN,
Cashier,

To Eugene Ford Auto Co.,
Eugene, Oregon.
C/o First National Bank.

First National Bank
Paid May 24, 1916
Eugene, Oregon.

Q. Invoice dated April 4, 1916, and draft April 3, 1916, they relate to the same transaction?

A. I couldn't state fully unless I had my records here to tell.

Q. From looking at the records you have that is your best recollection of it, is it not?

A. I should think they were. I could tell positively if I had my draft book.

Q. The draft and invoice are in the same amount and made practically on the same date?

A. They are.

Mr. SMITH.—We offer this draft and invoice as one exhibit.

Marked DEFENDANTS' EXHIBIT "B."

Ford Ford Motor Company Invoice

Portland

Sold to Eugene Ford Auto Company

Eugene, Oregon.

Charge same. Order date April 4, 1916.

Terms strictly net cash. Date shipped 4–23–16

Customers order

Contract

Shipped via. S. P. in U. P. 175291

| | |
|---|---|
| 8 Touring cars, 56″ tread | $3520.00 |
| Less 15% | 528.00 |
| | 2992.00 |
| Prop. freight Detroit to Portland | 333.54 |
| | $3327.54 |

Mot. Nos.
1116510
1067484
1022282
1008770
1116461
1116486
1116479
1116459

Dated at Portland, Oregon, Apr. 3, 1916.

$3327.54 No. 1894

Ford Ford

At sight, on the arrival of goods, pay to the order of

(Bank) Lumbermens National Bank

Thirty-three hundred twenty-seven and 54/100 Dollars (with exchange)

Value received and charge to the account of

FORD MOTOR COMPANY,

R. VAN HARRISEEN,

Cashier.

To Eugene Ford Auto Co.,

Eugene, Oregon.

C/o First National Bank.

First National Bank,

Paid May 24, 1916

Eugene, Oregon.

Q. I will now show you invoice dated March 28, 1916, for $3329.87, and draft dated March 29, 1916, for $3329.87. They relate to the same transaction, do they? A. Yes, sir.

Mr. SMITH.—We offer this draft and invoice as one exhibit.

Marked DEFENDANTS' EXHIBIT "C."

Ford Ford Motor Company Invoice

Portland

Sold to Eugene Ford Auto Company

Eugene, Oregon. Assg. stock

Charge same. Order date Mar. 28, 1916.

Terms Norman Date shipped Mar. 28, 1916.

First National Bank

Shipped via

| | |
|---|---|
| 8 Touring cars, 56" tread | $3520.00 |
| Less 15% | 528.00 |
| | $2992.00 |
| Prop. freight Detroit to Portland | 337.87 |
| | $3329.87 |

1115500
1115957
1115941
1115931 C. I. cover
1115943 "
1115933 "
1116008 "
1115791 "

Dated at Portland, Oregon, March 29, 1916.

$3329.87 No. 1877

Ford Ford

At sight, on the arrival of goods, pay to the order of

(Bank) Lumbermens National Bank

Thirty-three hundred twenty-nine and 87/100 Dollars with exchange

Value received and charge to the account of
FORD MOTOR COMPANY,
R. VAN HARRISEEN,
Cashier,

To Eugene Ford Auto Co.,
Eugene, Oregon.
C/o First National Bank.

First National Bank
Paid May 24, 1916
Eugene, Oregon.

Invoice for runabout, May 25, 1916, $387.10, marked

DEFENDANTS' EXHIBIT "D."

Ford Ford Motor Company Invoice
Portland, Ore.

Sold to Eugene Ford Auto Company
Eugene, Oregon.

Order date, May 25, 1916.

Charge same. Assg. stock.
Terms strictly cash. Date shipped May 25, 1916
Norman Shipped via
Customers order
Paid

| | |
|---|---|
| 1 Runabout, 56" tread | $390.00 |
| Less 15% | 58.50 |
| | $331.50 |
| Retail freight Detroit to Portland | 53.25 |
| 10 gal. gas and 4 qts. oil | 2.35 |
| | $387.10 |

1208507

Paid May 25, 1916
Ford Motor Company
Per Van H.

Redirect Examination.

Questions by Mr. McDOUGAL.—How do you account for the fact that the invoices have the word "Sold"?

Mr. SMITH.—Just a moment. That is not ambiguous. The testimony is not admissible unless an ambiguous word. The word "sold" has a definite meaning.

Q. I will withdraw that and put it in this way: Will you explain if any reason why this particular form of invoice was used in this transaction.

Mr. SMITH.—Objected to as incompetent, irrelevant and immaterial. The transaction was cash; they paid cash before they took these automobiles out of the car, before they got them in their possession.

COURT.—I think the witness may explain any statement that may be on that invoice; it is not a contract between anybody; it is simply a memorandum. He can explain it, if any mistake about it, I suppose.

A. It is simply a memorandum of shipment, and not to be construed as an invoice, because the cars were shipped on consignment, and at a time last spring when we were short of the regular form of automobile orders, as we call them, and had to use the invoices, parts invoices for shipping sheets for agents, to give them the numbers to check their cars.

Q. In other words, you used this particular form because you were out of the other form which you

customarily used in these transactions?

A. That is it.

Recross-examination.

Questions by Mr. HARDY.—Mr. McNamara, do you mean to say you didn't use this same form for the two years before? What are you going to say when I produce the forms used two years before?

A. I think you will find a great many of them different.

Q. Do you want to be understood before this jury, the reason you used this form was because you were out of the other form, and it is not the same identical form you used during the previous two years, while they were your agents?

A. They are not the form we are using now. I don't know about two years ago.

Q. Please return after lunch. I will have these here and show them to you.

Whereupon proceedings were adjourned until 2 P. M.

Tuesday, September 5, 1916, 2 P. M.

TESTIMONY OF F. B. NORMAN.

F. B. NORMAN, recalled by the plaintiff.

Direct Examination.

Questions by Mr. McDOUGAL.—Mr. Norman, I believe you have already testified that you are the manager, or were the manager at this time, of the Ford Motor Company, here in Portland?

A. Yes, sir.

Q. Will you state what this $16,077.50 that you sent down to Eugene to Mr. Goden was for.

Mr. SMITH.—Objected to as incompetent, irrelevant and immaterial, nothing to do with this case; they don't claim they ever tendered it to us except as testified here this morning. That is another matter. Not deposited in court, and not kept good, anyway.

Mr. McDOUGAL.—This is more for the purpose of getting at the value of the cars.

COURT.—Very well; proceed.

A. Refund on cars that had been paid by the Eugene Ford Auto Company.

Q. What do you mean by refund?

A. The money that they had paid to the bank on the cars that they had taken over from the—that we had shipped to them.

Q. Now, it is pleaded in the complaint here that the plaintiff tendered into court and have tendered into court with the clerk, the sum of $3401.12. Will you state to the jury how that amount was arrived at as a refund on these cars.

Mr. SMITH.—Just a moment, if the Court please. I want to correct that question, or statement of facts. That statement is not in the original complaint; the tender was not made with the original complaint; they have filed an amended complaint. If they will change that question, so it will show the amended complaint.

Mr. McDOUGAL.—Change that and put in the word "amended." So the question is correct.

Q. (Read as follows: Now, it is pleaded in the amended complaint here that the plaintiff tendered into court and have tendered into court with the clerk, the sum of $3401.12. Will you state to the

jury how that sum was arrived at as a refund on these cars.)

A. I am not familiar with those figures at this time.

Q. What does this $34401.12 represent?

A. It represents the contract deposit and rebate they have coming on cars over a certain volume of business that they had on straight 15%; we pay a certain rebate, additional rebate, and that is the earned rebate.

Q. What became of this $12,676.38 that was sent down to Eugene for the purpose of returning to the defendants in this case?

Mr. SMITH.—Objected to as incompetent, irrelevant and immaterial. Nothing to do with this case, inasmuch as it was not tendered in court here, and was never paid the defendants.

COURT.—I don't suppose it was necessary to tender into court if they offered to repay to the defendants before they undertook to take possession.

Mr. McDOUGAL.—We want to show why we didn't tender this money into court; it is proper to show at this time.

COURT.—I don't suppose paying into court would make any difference. If I understand that contract you were obliged to refund this money before you took possession of the cars. If you didn't do it, you were not entitled to possession of the cars and you couldn't vest the title in yourself by a tender to the Court later.

Q. (Read.)

A. That was paid to the bank on mortgage they had given for these cars.

Mr. SMITH.—We move to strike that out, if the Court please. There was no payment before this action was begun at all, and no payment to us, or for us, or with our authority, to anybody.

COURT.—They will have to show it was done with the authority of the defendants, or paid to them before the action was commenced, as I understand it.

Q. For what purpose did you say this was paid to the bank, this money?

A. Money that they had advanced on these cars for the Eugene Ford Auto Company.

Q. Do you know whether or not it was impossible for the Ford Motor Company to get possession of these cars, as far as the bank was concerned, until this money had been paid to the bank?

Mr. SMITH.—Objected to; that calls for a conclusion of the witness. Let him state the facts if they will justify such a position, and the man knows.

COURT.—I think the objection is well taken, and I don't see that it has anything to do with the merits of this particular case on trial now.

Mr. SMITH.—They took the cars under the writ. It is admitted here that the Deputy Marshal was down there and took the cars immediately after Mr. McDougal's brother made the alleged demand on that Monday morning.

Cross-examination.

Questions by Mr. HARDY.—Mr. Norman, at the time this controversy arose, you were the manager of the Ford Motor Company at Portland?

A. Yes, sir.

Q. And as such had charge of their business in the State of Oregon? A. Yes, sir.

Q. You are not the manager for them now?

A. Not at this particular place, no.

Q. Have nothing to do with their business in Oregon, any more? A. No, sir.

Q. At what date do you claim you gave the First National Bank at Eugene the twelve thousand dollars?

A. Sixteen thousand, I think it was, the value of the cars. I don't remember the dates now; it was at the time, though, after the cancellation went into effect.

Q. You don't know the date?

A. I haven't it here, no.

Q. You don't know how much you gave the First National Bank, either, do you?

A. Well, I don't remember the figures.

Q. It was after this action was begun? You know that, don't you?

A. Not that I know of, no.

Q. Don't you know, as a matter of fact, that it was not only after the action was begun but after the answer was filed? A. No, sir.

Q. You don't know that that statement is not true, though, do you?

A. There was no action begun at the time I authorized this money from the Lumbermens Bank to be sent to Eugene.

Q. No, I mean at the time you paid it to the bank. You say you paid some money to the First National

Bank at Eugene. Don't you know, as a matter of fact, you didn't do that until after this action was commenced and after the answer was filed?

A. That is probably so. I wouldn't say.

Q. Can you say how big a business the Ford Motor Company did last year? A. Not offhand, no.

Q. Isn't it a fact that the Ford Motor Car Company made and sold over a thousand cars a day?

A. I wouldn't say that, no.

Mr. McDOUGAL.—I object to that as improper cross-examination.

Mr. HARDY.—I think that is part of our own case, anyhow.

Mr. McDOUGAL.—Here is that telegram you asked for.

Q. Is this the telegram you sent to Winchell and Hathaway before you sent the registered letter?

A. Yes, sir.

Mr. HARDY.—We offer it in evidence, if your Honor please.

Mr. McDOUGAL.—For what purpose is that offered in evidence? To show cancellation of the contract?

Mr. HARDY.—The purpose it is offered in evidence for is it tends to show your course of conduct towards us. Tends to show malice, too.

Marked Defendants' Exhibit "E," and read as follows:

"Portland, Oregon, May 24, 1916.

Eugene Ford Auto Co.

Eugene, Oregon.

Be advised that your contract is cancelled. The

territory and your stock will be taken over by Vick Brothers who will open a branch at Eugene.

FORD MOTOR COMPANY."

Witness excused.

TESTIMONY OF V. W. WINCHELL.

Q. You can look at the invoice and refresh your memory as to the exact amount paid.

A. $390.00 less 15 per cent plus $53.25 freight; that is the price at Detroit, less our commission plus the freight to Eugene.

Q. Now, was there any further sum for you to pay the Ford Motor Car Company for these cars?

A. No, sir.

Q. And you paid for them at the time they were delivered? A. Yes, sir.

Q. Did you ever pay any other price to the Ford Motor Company than the price you paid upon delivery? A. No, sir.

Q. You were the agents for the Ford Motor Car Company in 1913, handling their cars from 1913 to 1914? A. That is 1913–14.

Q. During that year did you ever send any other money back to the company than you paid when the cars were delivered? A. No, sir.

Q. And you handled Ford cars from 1914–15?

A. Yes.

Q. Did you ever send any money back to the Ford Motor Car Company other than the price you paid upon delivery?

A. No, sir. That is pertaining to cars; outside of parts now.

Q. Yes. From 1915 to 1916 did you ever pay any

further price than the price they were invoiced to you at? A. No, sir.

Q. And you received the cars? A. Yes, sir.

Q. And sold them in the course of business?

A. Yes, sir.

Q. What was your profit per car during the season beginning August 1st, 1915, to August 1st, 1916?

A. Our profit was 15 per cent of the advertised price, at Detroit—advertised by the Ford Motor Car Company, plus a graduated bonus which was very necessary.

Q. You added to the price you paid the Ford Motor Car Company your profit, did you?

A. Yes, sir.

Q. And received that from the customer?

A. Yes, sir.

Q. And kept the money? A. Yes, sir.

Q. And if you didn't sell the car you simply had the car on your hands? A. Yes, sir.

Q. Did the Ford Motor Car Company take them back off you? A. No, sir.

Q. There were thirty-six of these touring cars, were there? A. Yes, sir.

Q. And one Sedan? A. Yes, sir.

Q. What did you pay for the Sedan?

A. Have you the bill there?

Q. I will ask you if the Sedan is invoiced on this paper I now hand you?

A. Yes, there is a carload of six touring cars, 56-inch tread; one Sedan, 56-inch tread; $925.00 for the Sedan, less 15 per cent.

Q. What was the net price to you of the Sedan?

A. $786.00 at Detroit. Now, I can't remember what the freight was.

Q. Plus the freight?

A. Plus the freight, yes, $786.25.

Q. This is the Sedan mentioned here that they took away from you in the replevin action?

A. Yes, sir.

Q. Dated 1915? A. Yes, sir.

Q. And you had had this on hand ever since and been unable to sell it, had you? A. Yes, sir.

Q. What is the fact as to whether in the meantime the Ford Motor Car Company had reduced its retail price on the Sedan?

A. We still owned the Sedan.

Q. Afterwards they reduced the price on them to the public? A. They reduced no price to us.

Q. Have they to the public? A. Yes, they have.

Q. But you were stuck for the same old price?

A. Yes, sir.

Q. And had the car on your hands at the time they took it away from you? A. Yes, sir.

Mr. HARDY.—I will offer this sheet in evidence, showing the Sedan which is in evidence in this case.

Marked Defendants' Exhibit "G" and read as follows:

Ford Motor Company, Portland Branch, 8/27/15.
Sold to Eugene Ford Auto Company,
Eugene, Oregon.

Factory stock.
Date shipped, 8/27/15.
First National Bank.
Terms, net cash.

| | |
|---|---|
| 6 Touring cars, 56-inch tread | $2640.00 |
| 1 Sedan, 56-inch tread | 925.00 |
| | $3565.00 |
| Less 15 per cent | 534.75 |
| | $3030.25 |
| Proportional freight Detroit to Portland | 300.17 |
| Speedometers | 42.00 |

658934 Sedan
257276
858647
858893
859655
859662
859665 "

Q. That was paid for, was it? A. Yes, sir.

Q. Now, Mr. Winchell, the pleadings show you had thirty-six touring cars on hand, and one Sedan, at the time the United States Marshal took the cars under writ of replevin?

A. Yes, sir, that is the Sedan that is mentioned there.

Q. Now, you have paid for these cars, it is admitted, a total of $16,077.50. Is that right?

A. Yes, sir.

Q. Was there any further sum remaining to be paid for these cars? A. No, sir.

Q. Nothing whatever in any way, shape or form?

A. No, sir.

* * * * * * *

Q. Now, one of the witnesses has testified that after this case was commenced, and after the cars were taken, somebody has gone into the First National Bank of Eugene and paid some debt of yours there. Did you ever authorize anyone to do that?

A. No, sir, I didn't know of that being done.

Q. Was it done with even your knowledge?

A. No, sir.

Q. Long after the action was commenced and your answer filed? A. Yes, sir.

* * * * * * * * *

Q. And the 5% bonus on the amount of thirty-six touring cars at $493.25, and the Sedan at $983.25?

A. Yes, less a partial payment probably six months ago, some time ago, on this bonus money.

Q. That is six months ago you received some bonus money? A. Yes, sir.

Q. And when you and Mr. Goden figured up the bonus money that he said he would get you, what did you figure it up at, at that time?

A. I can't give the exact amount.

TESTIMONY OF F. M. HATHAWAY.

Q. What was the total you had paid for the cars?

A. I couldn't say the exact amount, but around sixteen thousand—

Q. $16,077.50? A. Yes, sir.

Q. The amount you had actually paid for the cars?

A. Yes, sir.

Q. State to the jury whether or not there was any further sum to be paid by you? A. No, sir.

Q. Then when you sold the cars you got your profit? A. Yes, sir.

Q. And if you didn't sell them you didn't get the profit. Is that right?

A. They remained ours.

* * * * * * * * *

Q. When you take the cars from the Ford Motor Car Company and pay them, they figure that on your bonus, just as if you passed them out to the public, do they? A. Yes, sir.

Q. That is they were sold as far as the Ford Motor Car Company is concerned.

A. That is the way.

Q. And fully paid for, as far as you are concerned?

A. Yes, sir.

Q. And if you don't sell them again yourself, that is your loss, is it?

A. They remain our property.

Q. In all the three years you dealt with them—

JUROR.—I would like to ask if they have to sign a contract each year for these cars? A. Yes, sir.

JUROR.—The same old contract or a new form of contract?

A. Why, it is changed a little; it seems to be about the same thing.

Q. Have you ever read through and studied the language, and know the meaning of all the fine print in it? A. No, sir.

Q. These forty-eight odd paragraphs? A. No.

Q. Now, Mr. Hathaway, in all the years you have dealt with them has there ever been a time, a single instance, but what you have had to pay for the car on delivery, to you?

A. No, we only pay the one price.

Q. And you pay that on delivery of the car?

A. Yes.

Q. And you treat the car as yours and go on and sell it or dispose of it as you like? A. Yes, sir.

Q. You have done that for three years?

A. Four years I was with the Ford Motor Company.

Q. You were their agent over in Eastern Oregon?

A. Yes, sir.

Q. Were you ever called upon to pay any further price than the price you pay on delivery?

A. No, sir.

Q. In all the 437 cars that you sold at Eugene, did you ever pay a cent extra over and above the price you were required to pay to get the cars?

A. No, sir.

Q. Were you ever asked to?

A. Never asked to.

Q. Did they ever claim anything different?

A. No, there was nothing.

TESTIMONY OF F. B. NORMAN—(RECALLED IN REBUTTAL—CROSS-EXAMINATION).

Q. Well, you got your money out of it, didn't you?

A. Yes, sir.

Q. And you made the cars to sell?

A. Yes, sir.

Q. And you shipped them to them to sell?

A. Yes, sir.

Q. And they were selling your cars only. Everything they sold were Ford cars? A. Yes, sir.

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**Defendants' Exhibit "A."**

$3327.54 No. 1822

FORD FORD

The Universal Car The Universal Car

Dated at Portland, Ore., Mar. 14, 1916 191—

At Sight, on the Arrival of Goods, Pay to the Order of [Bank] Lumbermens National Bank Thirty-three hundred twenty-seven and 54/100 Dollars

With Exchange

Value received and charge to the account of

FORD MOTOR COMPANY

R. VAN HOOMISSEN,

Cashier

To Eugene Ford Auto Co.

Eugene, Ore.

c/o First National Bank

S. P. 6686

[Stamped across face:] First National Bank, Eugene, Oregon. Paid May 24, 1916.

Lumbermens National Bank, Portland, Oregon, U. S. A. 27911.

[Stamped on reverse side:] Pay to the order of any bank or banker.

Mar. 14, 1916.

LUMBERMENS NATIONAL BANK,

Portland, Oregon.

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY

Portland

Order Date—Mar. 13, 1916

Assy stock

Date Shipped—Mar. 7–16

Sold to Eugene Ford Auto Company, Eugene, Oregon

Charge—Same

Terms: Strictly Net Cash Shipped via Norman

Customer's Order

Farmers & Merchants Bank

| | | |
|---|---|---|
| 8 Touring car 56″ tread..... | 3520.00 | |
| Less 15% ..... | 528.00 | |
| | 2992.00 | |
| Prop. freight Detroit to Portland ..... | 335.54 | $3327.54 |

Motor Nos.

1067411
1067426
1067396
1067382
1068830
1067377
1068781
1067415

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

[Endorsed]: U. S. District Court. Filed Sep. 5, 1916. G. H. Marsh, Clerk District of Oregon.

U. S. District Court, District of Oregon. Filed Jul. 31, 1919. G. H. Marsh, Clerk.

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**Defendants' Exhibit "B."**

Form 180

$3327.54 No. 1894

FORD FORD

The Universal Car. The Universal Car

Dated at Portland, Ore., Apr. 3, 1916. 191—

At Sight, on the Arrival of Goods, Pay to the Order of (Bank) Lumbermens National Bank Thirty-three hundred twenty-seven and 54/100 Dollars

with exchange

Value received and charge to the account of

FORD MOTOR COMPANY

R. VAN HOOMISSEN,

Cashier.

To Eugene Ford Auto Co.,

Eugene, Ore.,

c/o First Nat. Bank

[Stamped across face:] First National Bank, Eugene, Oregon. Paid May 24, 1916.

Lumbermens National Bank, Portland, Oregon, U. S. A. 28493.

[Stamped on reverse side:] Pay to the order of any bank or banker.

Apr. 3, 1916.

LUMBERMENS NATIONAL BANK,
Portland, Oregon.

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY
Portland
Order Date—April 4 1916
Date Shipped—3-23-16

Sold to Eugene Ford Auto Company, Eugene, Oregon

Charge—Same

Terms: Strictly Net Cash

Shipped via SP in UP 175291

Customer's Order Contract

| | | |
|---|---|---|
| 8 Touring cars 56″ tread..... | 3520.00 | |
| Less 15% ..... | 528.00 | |
| | 2992.00 | |
| Prop freight Detroit to Portland ..... ..... | 335.54 | $3327.54 |

Motor Nos.
1116510
1067484
1062282
1008770
1116461
1116486
1116479
1116459

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

[Endorsed]: U. S. District Court. Filed Sep. 5, 1916. G. H. Marsh, Clerk District of Oregon.

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**Defendants' Exhibit "C."**

Form 180 No. 1175

$3621.08

FORD FORD

The Universal Car. The Universal Car

Dated at Portland, Ore., May 12, 1915. 191

At Sight, on the Arrival of Goods, Pay to the Order of [Bank] Lumbermens National Bank Thirty-six hundred twenty-one and 08/100 Dollars.

With Exchange.

Value received and charge to the account of

FORD MOTOR COMPANY.

R. VAN HOOMISSEN,

Cashier.

To Eugene Ford Auto Co.

Eugene, Or.,

c/o First Natl. Bank.

[Stamped across face:] Paid May 13, 1915. First National Bank, Eugene, Oregon.

[Stamped on reverse side:] Lumbermen's National Bank.

[Endorsed]: E–7768. Ford Motor Company vs. V. W. Winchell et al. Original Defendants' Exhibit "C." G. H. Marsh, Clerk.

Accountant's Association Standard Form (Revised 1913) Form 816

FREIGHT BILL

5–13–15 Eugene, Ore. Station.

5–13 1915

Consignee Order Ford Motor Co. Freight Bill No. 559

Destination—Notify

Route—Eugene Ford Auto Co

(Point of Origin to Destination)

To OREGON ELECTRIC RAILWAY CO., Dr., For Charges on Articles Transported:

| Way-Billed From | Way-Bill Date and No. | Full Name of Shipper | Car Initials and No. |
|---|---|---|---|
| Port. | 5/12/15 1047 | Ford Auto Co. | G N 36753 |

| Point and Date of Shipment | Connecting Line Reference | Previous Way-Bill References | Original Car Initials and No. |
|---|---|---|---|
| S. P. E. Portland | | 5/12/15 10.00 | Swg. Assumed. |

| Number of Packages, Articles and Marks | Weight | Rate | Freight | Advances | Total |
|---|---|---|---|---|---|
| | 10500 | | | | |
| 7 Autos touring | | | | | |
| 1 do Runabout 1380 | | | | | |
| 8 Horns | | | | | |
| 8 Pr. Oil lamps | | | | | |
| 8 Tail lamps | | | | | |
| 8 Steel tops | | | | | |
| 8 Pr. Elect. lamps | | | | | |
| 8 Tops | | | | | |
| 8 P. G. Curtains | | | | | |
| *Total Prepaid $———— | 12560 | 46 | 5778 | | |

8 Wd. Shields
8 Speedmeters
Damage
680
40 ft. car ordered
OK. S. L. & C.

Received Payment.....191.. Total.....5778

[Stamped across face:] Oregon Electric Railway Co. Paid May 13, 1915. H. R. K. Sweek, Agt.

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY

Portland Branch

Portland

Order Date—5/12/15.

Assembly Stock.

Date Shipped—5/12/15.

Sold to Eugene Ford Auto Company, Eugene, Ore.

Charge—Same.

Terms: Strictly Net Cash. Shipped via Norman.

First National Bank.

Customer's Order.

| | |
|---|---|
| 7 Model T Touring cars fully equipped 56″ tread | 3430.00 |
| 1 Model T Runabout fully equipped 56″ tread | 440.00 |
| | 3870.00 |
| Less 15% | 580.50 |
| | 3289.50 |
| Proportional Freight Detroit to Portland | 331.58 |
| | $3621.08 |

681514
681516
681533
681543
681610
681635
681795
681849 Rbt
Req. #11. GN 36753.
5/12/15 W.

5/12 W

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

[Endorsed]: U. S. District Court, District of Oregon. Filed Jul. 31, 1919. G. H. Marsh, Clerk.

Form 180
$3666.94 No. 1218
1.90

3668.84

FORD FORD
The Universal Car The Universal Car

Dated at Portland, Ore., June 2, 1915. 191—

At sight, on the arrival of goods, pay to the order of [Bank] Lumbermens National Bank Thirty six hundred sixty six and 94/100 Dollars, with exchange.

Value received and charge to the account of
FORD MOTOR COMPANY.
R. VAN HOOMISSEN,
Cashier.

To Eugene Ford Auto Co.,
Eugene, Oregon.
c/o First National Bank.

[Stamped across face:] Paid. Jun. 4, 1915. First National Bank, Eugene, Oregon.

INVOICE

FORD
The Universal Car.

FORD MOTOR COMPANY.
Portland Branch
Portland.

Order date—6/2/15.
Assembly Stk.
Date shipped—6/2/15.

Sold to Eugene Ford Auto Company,
Eugene, Ore.
Charge—Same.
Terms: Strictly net cash.
Norman. Shipped via
First National Bank
Customer's Order.

| | |
|---|---|
| 8 Model T Touring cars fully equipped 56″ tread | 3920 00 |
| Less 15% | 588 00 |
| | 3332 00 |
| Proportional freight Detroit to Portland | 334 94 |
| | $3666 94 |

681759
681799
682025
682050
682064
682065
682067
682072

Req. #10 SP. in SP. 61981
6/2/15 CHW
6/2 CHW

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

Form 180
$3666.75 No. 1189
1.90

3668.65
.48

3669.13

FORD FORD
The Universal Car The Universal Car

Dated at Portland, Ore., May 14, 1915. 191—

At sight, on the arrival of goods, pay to the order of [Bank] Lumbermens National Bank Thirty six hundred sixty six and 75/100 Dollars, with exchange.

Value received and charge to the account of
FORD MOTOR COMPANY.
R. VAN HOOMISSEN,
Cashier.

To Eugene Ford Auto Co.,
Engene, Ore.,
c/o First Nat. Bank.

[Stamped across face:] Paid May 15, 1915. First National Bank, Eugene, Oregon.

[Stamped on reverse side:] Lumbermens National Bank.

Accountant's Association Standard Form (Revised 1913) Form 816

FREIGHT BILL

Eugene, Ore. Station.

Order 5-15 1915

Consignee Ford Motor Co. Freight Bill No. 654

Destination—Notify

Route—Eugene Ford Auto Co

(Point of Origin to Destination)

To OREGON ELECTRIC RAILWAY CO., Dr., For Charges on Articles Transported:

| Waybilled From | Way-Bill Date and No. | Full Name of Shipper | Car Initials and No. |
|---|---|---|---|
| Port. | 5/13/15 1263 | Ford M. Co. | Wab. 20666 |

| Point and Date of Shipment | Connecting Line Reference | Previous Way-Bill References | Original Car Initials and No. |
|---|---|---|---|
| 10.00 Swg. | | | |

| Number of Packages, Articles and Marks | Weight | Rate | Freight | Advances | Total |
|---|---|---|---|---|---|
| 8 Autos | | | | | |
| 8 Horns | | | | | |
| 8 Pr. Oil lamps | 12000 | | | | |
| 8 Sets Tools | 680 | Damage | | | |
| 8 Pr. E. Lamps | ——— | | | | |
| 8 Tops | 12680 | 46 | 5833 | | |
| 8 Pkg. Curtains | | | | | |
| *Total Prepaid $——— | | | | | |

Received Payment.....191.. Total.....5833

O R S L C Agent.

40 ft. car ordered.

[Stamped across face:] Oregon Electric Railway Co. Paid May 15, 1915. H. R. K. Agt.

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY

Portland Branch

Portland

Order Date—5/14/15

Assembly Stk

Date Shipped—5/14/15

Sold to Eugene Ford Auto Company, Eugene, Ore.

Charge—Same

Terms: Strictly Net Cash Shipped via

Norman

Customer's Order

1st National

| | |
|---|---|
| 8 Model T. Touring cars fully equipped 56″ tread | 3920.00 |
| Less 15% | 588.00 |
| | 3332.00 |
| Proportional freight Detroit to Portland | 334.75 |
| | $3666.75 |

681666
681687
681691
681700
681724
681726
681734
681748

Req #9 OER in Wab 20666

5/14/15 W

5/14—W

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals, for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

$3403.68
1 80

3405 48
48

3405 98

No. 1398

FORD
The Universal Car

FORD
The Universal Car

Dated at Portland, Ore., Sep. 8, 1915. 191—

At Sight, on the Arrival of Goods, Pay to the Order of [Bank] Lumbermens National Bank Thirty-four hundred three and 68/100 Dollars

With Exchange

Value received and charge to the account of

FORD MOTOR COMPANY.
R. VAN HOOMISSEN,
Cashier.

To Eugene Ford Auto Co.
Eugene Ore
c/o 1st Natl Bank

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY

Portland Branch

Portland

Order Date—9/9/15

Assem. Stk.

Date Shipped—9/9/15

Sold to Eugene Ford Auto Company

Eugene, Ore.

Charge—Same.

Terms: Strictly net cash.

Norman. Shipped via

First National Bank

Customer's Order.

| | |
|---|---|
| 8 Touring cars 56″ tread | 3520 00 |
| Less 15% | 528 00 |
| | 2992 00 |
| Freight Detroit to Portland | 363 68 |
| Speedometers | 48 00 |
| | 3403 68 |

850469 Floyd H. Cornwall 9/15

850522 Ethel Standard

862641

862644 Willhelm & Co.

862651 Bangs Livery Co.

862660 R A Stephens 9/25

862711 Francis Young 11/2

862727 F M Ramage Sept. 16th.

Contract. SPinSP 61958

9/9 W FSP

9/9 W

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

$3329/87 No. 1877

FORD

The Universal Car.

Form 180 FORD

The Universal Car

Dated at Portland, Ore., Mar. 19, 1916. 191—

At sight, on the arrival of goods, pay to the order of [Bank] Lumbermens National Bank Thirty three hundred twenty nine and 87/100 Dollars, with exchange.

Value received and charge to the account of

FORD MOTOR COMPANY.

R. VAN HOOMISSEN,

Cashier.

To Eugene Ford Auto Co.,

Eugene, Ore.

c/o First National Bank.

[Stamped across face:] First National Bank, Eugene, Oregon. Paid. May 24, 1916. Lumbermen's National Bank, Portland, Oregon, U. S. A. 23896.

[Stamped on reverse side:] Pay to the order of any bank or banker. Mar. 29, 1916. Lumbermen's National Bank, Portland, Oregon.

FORD INVOICE.

The Universal Car

FORD MOTOR COMPANY.

Portland.

Order Date—Mar. 28, 1916.

Assy stock.

Date Shipped—Mar. 28, 1916.

Sold to Eugene Ford Auto Company, Eugene, Oregon.

Charge—Same.

Terms: Strictly Net Cash. Shipped via Norman.

First National Bank.

Customer's Order.

| | | |
|---|---|---|
| 8 Touring cars 56″ tread..... | 3520 00 | |
| Less 15% ..... | 528 00 | |
| | 2992 00 | |
| Prop. freight Detroit to Portland..... | 337 87 | #3329 87 |

1115500
1115957
1115941
1115931 C. I. Cover
1115943 "
1115933 "
1116008 "
1115791 "

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all

seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

[Endorsed:] U. S. District Court. Filed Sep. 5, 1916. G. H. Marsh, Clerk. District of Oregon.

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**Defendants' Exhibit "D."**

FORD
The Universal Car.

INVOICE.

FORD MOTOR COMPANY.
Portland, Ore.

Order Date—May 25, 1916.
Assy. stock.
Date shipped—May 25 1916

Sold to Eugene Ford Auto Company
Eugene, Ore.
Charge—Same.
Terms: Strictly net cash.
Norman. Shipped via
Customer's Order.
Paid

| | | |
|---|---|---|
| 1 Runabout 56″ tread..... | 390 00 | |
| Less 15%..... | 58 50 | |
| | 331 50 | |
| Retail freight Detroit to Portland ..... | 53 25 | |
| 10 gal gas and 4 qts oil..... | 2 35 | $387 10 |

(Req. 5537)
1208507

[Stamped across face:] Paid May 25, 1916. Ford Motor Company. Per Van H.

[Endorsed:] U. S. District Court. Filed Sep. 5, 1916. G. H. Marsh, Clerk. District of Oregon.

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**Defendants' Exhibit "F."**

Form 180

$3667.42 No. 933

FORD FORD

The Universal Car The Universal Car

Dated at Portland, Ore., Mar. 6, 1915. 191—.

At sight, on the arrival of goods, pay to the order of [Bank] Lumbermens National Bank Thirty-six hundred sixty seven and 42/100 Dollars, with Exchange.

Value received and charge to the account of

FORD MOTOR COMPANY.
R. VAN HOOMISSEN,
Cashier.

To Eugene Ford Auto Co.,
Eugene, Oregon.
c/o First National Bank.

[Stamped across face:] First National Bank, Eugene, Oregon. Paid Mar. 10, 1915. Lumbermens National Bank, Portland, Oregon, U. S. A. 18118.

[Stamped on reverse side:] Pay to the order of any Bank or Banker. Mar. 6, 1915. Lumbermens National Bank, Portland, Oregon.

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY

Portland Branch.

Portland.

Order Date March 20th—5

7T Assem. Stk

1R Fctry. Stk.

Date Shipped—March 20th—5

Sold to Eugene Ford Auto Company.

Eugene, Oregon.

Charge—Same.

Terms: Strictly Net Cash.

Norman Shipped via

First National.

Customer's Order.

| | |
|---|---|
| 7 Model T Touring cars fully equipped 56" tread | 3430.00 |
| 1 Model T Runabout fully equipped 56" tread | 440.00 |
| | 3870.00 |
| Less 15% | 580.50 |
| | 3289.50 |
| Proportional freight Detroit to Eugene, Oregon | 332.38 |
| | $3621.88 |

| Motor No. | Car No. |
|---|---|
| 686592 | 604969 |
| 686560 | 604979 |
| 686524 | 604982 |
| 686608 | 604983 |
| 686547 | 604985 |
| 687279 | 604989 |
| 687978 | 604994 |
| 694367 Rbt | 622112 Rbt |
| 5 | OE in GN #36027 |
| 3/20 W | |
| 3/20 W | |

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

[Endorsed]: U. S. District Court. Filed Sep. 6, 1916. G. H. Marsh, Clerk District of Oregon.

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY

Portland Branch.

Portland.

Order Date—6/19/15

Assembly Stk.

Date Shipped—6/17/15

Sold to Eugene Ford Auto Company.

Eugene, Oregon.

Charge—Same.

Terms: Strictly Net Cash.

Norman Shipped via

First National Bank.

Customer's Order.

8 Model T Touring fully equipped 56" tread..3920.00

Less 15%..... 588.00

3332.00

Proportional freight Detroit to Portland.. 332.94

$3664.94

592396
631877
631880
648899
648900
681998
682019
682039

Req. #4 SP 61840

6/19/15. CHW.

6/19 CHW

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

Form 180

$3664.94 No.1246

FORD FORD
The Universal Car The Universal Car

Dated at Portland, Ore., Jan. 19, 1915. 191—

At Sight, on the Arrival of Goods, pay to the Order of [Bank] Lumbermens National Bank Thirty-six hundred sixty-four and 94/100 Dollars.

With Exchange

Value received and charge to the account of

FORD MOTOR COMPANY.
R. VAN HOOMISSEN,
Cashier.

To Eugene Ford Auto Co.,
Eugene, Ore.
c/o First Natl. Bank.

[Stamped across face]: Paid Jun. 21, 1915. First National Bank, Eugene, Oregon. Lumbermens National Bank, Portland, Oregon, U. S. A. 20696.

[Stamped on reverse side:] Pay to the order of any bank or banker. Jun. 19, 1915. Lumbermens National Bank, Portland, Oregon.

Form 748

Standard
5-13-165M.

FREIGHT BILL

Station—Eugene, Oregon. Date—6 19 1915,

Consignee—Order Ford Motor Co Nfty Eugene Ford Auto Co.

Freight Bill No. 11882

Destination..... Via.....

To Southern Pacific Company, Dr., For Charges on Articles Transported

| Way-Billed From | Waybill Date, Series and No. | Consignor | Car Initials and No. |
|---|---|---|---|
| East Portland Oregon | 6 17 1915 1847 | F. M. CO. | S. P. 61840 |

| Connecting Line Reference | Original Point of Shipment | Original Waybill No. and Date | Original Car |
|---|---|---|---|
| | | | |

Car Diverted at Salem Oregon

| Number of Packages, Articles and Marks | Weight | Rate | Freight | Advances | Total |
|---|---|---|---|---|---|
| 8 auto tops 8 horns 8 pr. oil lamps | | | | | |
| 8 tail lamps 8 sets tools | | | | | |
| 8 pr. elect. lamps 8 tops | | | | | |
| 8 pack. curtains 8 W. Shields | 1158O | 46 | 5327 | | |
| ORS. C. Diversion | | | 200 | | |

LOCATION
Warehouse Post or Section

Received payment for the Company, .....191.. .....Agent
Cashier or Collector

Total.....
Prepaid....
To Collect....5527
Make checks payable to the company

SUBJECT TO STORAGE OR DEMURRAGE CHARGES IN ACCORDANCE WITH PUBLISHED TARIFFS

[Printed in left-hand margin:]

The Company aims to serve the public pleasantly and well. Officers and Employees are working together in this, and the failure of one is a reflection upon all. Our customers will render a service by calling attention to delinquency. Address Assistant to the President, Flood Building, San Francisco, California.

This Freight Bill should accompany Claim for Overcharge, Loss or Damage

[Stamped across face:] Paid Jun. 21, 1915. A. J. Gillette, Agt.

**Defendants' Exhibit "G."**

FORD INVOICE

The Universal Car

FORD MOTOR COMPANY

Portland Branch

Portland

Order Date—8/27/15

Factory Stk

Date Shipped—8/27/15

Sold to Eugene Ford Auto Company, Eugene Ore

Charge—Same

Terms: Strictly Net Cash Shipped via Norman

First National Bank

Customer's Order

| | |
|---|---|
| 6 Touring cars 56″ tread | 2640.00 |
| 1 Sedan 56″ tread | 925.00 |
| | 3565.00 |
| Less 15% | 534.75 |
| | 3030.25 |
| Proportional freight Detroit to Portland | 300.17 |
| Speedometers | 42.00 |
| | $3372.42 |

| | | | |
|---|---|---|---|
| 658934 | Sedan | Do not include in chattel | 925 |
| 857276 | 6 @ $400 each | | 15 |
| 858647 | | | |
| 858893 | F. H. McCormick | | 4625 |
| 859655 | Zinnall J. W. | Herbert A. Stoneberg | 925 |
| 859662 | | | |
| 859665 | | | |

138.75

925
138.75

786.25

Contract
8″27/15. W.

SP in UP 85452
FSP

8/27

IMPORTANT NOTICE.

Before opening railroad car, be sure and examine car seals, keeping record of same and numbers of all seals, for your own protection in case of shortage or damage.

FORD MOTOR COMPANY.

[Endorsed]: U. S. District Court. Filed Sep. 6, 1916. G. H. Marsh, Clerk, District of Oregon.

No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 7, 1920. F. D. Monckton, Clerk.

**Chattel Mortgage.**

KNOW ALL MEN BY THESE PRESENTS, That V. W. Winchell and F. M. Hathaway, copartners doing business as Eugene Ford Auto Co., for and in consideration of the sum of Twenty-eight Hundred Dollars to us in hand paid by First National Bank, Eugene, Oregon, the receipt whereof is hereby acknowledged, do hereby bargain, sell, assign and transfer unto the said First National Bank the following described personal property, the same being owned by us and in our possession at Eugene, Oregon, to wit:

8 Ford Touring Cars, 56″ tread.

Motor Nos.

1066396
1078981
1067359
1079020
1079019
1078965
1066547
1068871

56¢ revenue stamps attached to original note secured by this mortgage and canceled.

The above sale is intended as a mortgage to secure the said First National Bank, its successors or legal representatives the payment of one certain promissory note for the sum of TWENTY-EIGHT HUNDRED DOLLARS dated May 1, 1916, payable on demand with interest at 10 per cent per annum from date.

Now, should default be made in the payment of the said principal sum, or any installments of interest thereon, or should the said V. W. Winche*ll &* F. M. Hathaway sell or dispose of, or attempt to sell or dispose of, or remove or attempt to remove out of said County said property or any part thereof, without first obtaining the written consent of the said First National Bank or suffer the same or any part thereof to be taken on attachment or execution, then it shall be lawful for the said First National Bank, its successors or legal representatives with the aid and assistance of any person or persons whatsoever to enter any place or places where the said goods and chattels may be found and to take and carry away the same, and the same to sell or dispose of at public or private sale, as it may see fit, and out of the proceeds arising from such sale, to retain and pay the sums above mentioned and the costs and expenses and reasonable charges for making such sale, together with its reasonable attorney's fees, and the overplus, if any there be, pay to the said V. W. W*e*nchell and F. M. Hathaway, their assigns or legal representatives.

Witness our hands —— this 1st day of May, 1916.

F. M. HATHAWAY. [Seal]

V. W. WINCHELL. [Seal]

In presence of

J. VAN WILSON.

ARCHIE W. LIVERMORE.

State of Oregon,
County of Lane,—ss.

On this, the 1st day of May, A. D. 1916, personally came before me, a Notary Public in and for said County, the within named V. W. Winchell and F. M. Hathaway, to me personally known to be the identical persons described in, and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 1st day of May, 1916.

[Notarial Seal] ARCHIE W. LIVERMORE,
Notary Public for Oregon.

My Commission expires Sep. 20, 1919.

Filed for Record Jun. 2, 1919, 3:51 o'clock P. M. S. M. Russell, County Clerk. By P. M. Norton, Deputy.

State of Oregon,
County of Lane,—ss.

I, R. S. Bryson, County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Chattel Mortgage with the original, and that the same is a correct transcript therefrom, and the whole of said original Chattel Mortgage as the same appears of record at page 380, Book No. 7, Lane County Chattel Mortgage Records, now in my official care and custody.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 23d day of July, 1919.

[Seal] R. S. BRYSON,
County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, Oregon.

[Endorsed]: U. S. District Court, District of Oregon. Filed Jul. 26, 1919. G. H. Marsh, Clerk.

No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 17, 1920. F. D. Monckton, Clerk.

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**Chattel Mortgage.**

KNOW ALL MEN BY THESE PRESENTS, That V. W. Winchell and F. M. Hathaway, copartners doing business as Eugene Ford Auto Co., for and in consideration of the sum of Eighty-four Hundred Dollars to us in hand paid by First National Bank, Eugene, Oregon, the receipt whereof is hereby acknowledged, do hereby bargain, sell, assign and transfer unto the said First National Bank the following described personal property, the same being owned by us and in our possession at Eugene, Oregon, to wit:

8 Touring cars, 56″ tread.

Motor Nos. 1067411
1067426
1067396
1067382
1068830
1067377
1068781
1067415

8 Touring car*d,* 56″ tread.

Motor Nos. 1115500
1115957
1115941
1115931 C. I. Cover
1115943 "
1115933 "
1116008 "
1115791 "

8 Touring cars, 56″ tread.

Motor Nos. 1116510
1067484
1062282
1008770
1116461
1116486
1116479
1116459

$1.68 revenue stamps attached to original note secured by this mortgage and canceled.

The above sale is intended as a mortgage to secure the said First National Bank, its successors or legal representatives the payment of one certain promis-

sory note for the sum of EIGHTY-FOUR HUNDRED DOLLARS, dated May 24, 1916, payable on demand with interest at 10 per cent per annum from date.

Now, should default be made in the payment of the said principal sum, or any installment of interest thereon, or should the said V. W. Winchell & F. M. Hathaway sell or dispose of, or attempt to sell or dispose of, or remove or attempt to remove out of said county said property, or any part thereof, without first obtaining the written consent of the said First National Bank or suffer the same or any part thereof to be taken on attachment or execution, then it shall be lawful for the said First National Bank, its successors or legal representatives, with the aid and assistance of any person or persons whatsoever, to enter any place or places where the said goods and chattels may be found and to take and carry away the same, and the same to sell or dispose of at public or private sale, as it may see fit, and out of the proceeds arising from such sale to retain and pay the sums above mentioned and the costs and expenses and reasonable charges for making such sale, together with its reasonable attorney's fees, and the overplus, if any there be, pay to the said V. W. Winchell and F. M. Hathaway their assigns or legal representatives.

Witness our hands —— this 24th day of May, 1916.

F. M. HATHAWAY. [Seal]

V. W. WINCHELL. [Seal]

In the presence of

_____,

ARCHIE W. LIVERMORE,

State of Oregon,
County of Lane,—ss.

On this, the 24th day of May, A. D. 1916, personally came before me, a Notary Public in and for said county, the within named V. W. Winchell and F. M. Hathaway, to me personally known to be the identical persons described in, and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 24th day of May, 1916.

[Notarial Seal] ARCHIE W. LIVERMORE,
Notary Public for Oregon.

My Commission expires Sept. 20, 1919.

Filed for record May 27, 1916, 2:03 o'clock P. M. Stacy M. Russell, County Clerk.

State of Oregon,
County of Lane,—ss.

I, R. S. Bryson, County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Chattel Mortgage with the original, and that the same is a correct transcript therefrom, and the whole of said original Chattel Mortgage as the same appears of record at page 374, Book No. 7, Lane County Chattel Mortgage Records, now in my official care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County Court in

and for Lane County, State of Oregon, this 23d day of July, 1919.

[Seal] R. S. BRYSON,
County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, Oregon.

[Endorsed]: U. S. District Court, District of Oregon. Filed Jul. 26, 1919. G. H. Marsh, Clerk.

No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 17, 1920. F. D. Monckton, Clerk.

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**Chattel Mortgage.**

KNOW ALL MEN BY THESE PRESENTS, That V. W. Winchell and F. M. Hathaway, copartners doing business as the Eugene Ford Auto Co., for and in consideration of the sum of Twenty-eight Hundred Dollars to us in hand paid by First National Bank, Eugene, Oregon, the receipt whereof is hereby acknowledged, do hereby bargain, sell, assign and transfer unto the said First National Bank the following described personal property, the same being owned by us and in our possession at Eugene, Oregon, to wit:

8 Ford touring cars, 56″ tread.

Motor Nos.

1078972
1066345
1078975
1079064
1079033
1079013
1078948
1079104

56¢ revenue stamps attached to original note secured by this mortgage.

The above sale is intended as a mortgage to secure the said First National Bank, Eugene, Oregon, its successors or legal representatives the payment of one certain promissory note for the sum of TWENTY-EIGHT HUNDRED DOLLARS, dated April 22, 1916, payable on demand with interest at 10 per cent per annum from date.

Now, should default be made in the payment of the said principal sum, or any installment of interest thereon, or should the said V. W. Winchell & F. M. Hathaway sell or dispose of or attempt to sell or dispose of or remove or attempt to remove out of said County said property, or any part thereof, without first obtaining the written consent of the said First National Bank or suffer the same or any part thereof to be taken on attachment or execution, then it shall be lawful for the said First National Bank, its successors or legal representatives, with the aid and assistance of any person or persons whatsoever, to enter any place or places where the said goods and chat-

tels may be found, and to take and carry away the same, and the same to sell or dispose of at public or private sale, as it may see fit, and out of the proceeds arising from such sale to retain and pay the sums above mentioned and the costs and expenses and reasonable charges for making such sale together with its reasonable attorney's fees and the overplus, if any there be, pay to the said V. W. Winchell and F. M. Hathaway, assigns or legal representatives.

Witness our hands —— this 22d day of April, 1916.

V. W. WINCHELL. [Seal]
F. M. HATHAWAY. [Seal]

In presence of
R. CLAUDE GRAY.
ARCHIE W. LIVERMORE.

State of Oregon,
County of Lane,—ss.

On this, the 22d day of April, A. D. 1916, personally came before me, a notary public in and for said county, the within named V. W. Winchell and F. M. Hathaway, to me personally known to be the identical persons described in, and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 22d day of April, 1916.

[Notarial Seal] ARCHIE W. LIVERMORE,
Notary Public for Oregon.

My Commission expires Sept. 20, 1919.

Filed for Record Jun. 2, 1916, 3:51 o'clock P. M. S. M. Russell, County Clerk. By P. M. Norton, Deputy.

State of Oregon,
County of Lane,—ss.

I, R. S. Bryson, County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Chattel Mortgage with the original, and that the same is a correct transcript therefrom, and the whole of said original Chattel Mortgage as the same appears of record at page 379, Book No. 7, Lane County Chattel Mortgage Records, now in my official care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 23d day of July, 1919.

[Seal] R. S. BRYSON,
County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, Oregon.

[Endorsed]: U. S. District Court, District of Oregon. Filed Jul. 26, 1919. G. H. Marsh, Clerk.

No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 17, 1920. F. D. Monckton, Clerk.

**Chattel Mortgage.**

KNOW ALL MEN BY THESE PRESENTS, That we, V. W. Winchell and F. M. Hathaway, co-partners doing business as Eugene Ford Auto Co., for and in consideration of the sum of Fifty-six Hundred ($5600.00) Dollars to us in hand paid by The First National Bank of Eugene, Oregon, the receipt whereof is hereby acknowledged, do hereby bargain, sell, assign and transfer unto the said First National Bank, of Eugene, Oregon, the following personal property, the same being owned by us and in our possession at Eugene, Oregon, to wit:

16 Touring cars, 56″ tread.

| Motor Nos. | Motor Nos. |
|---|---|
| 1003662 | 1016668 |
| 1003677 | 1017394 |
| 1006667 | 1017415 |
| 1006689 | 1017416 |
| 1006742 | 1017423 |
| 1019299 | 1017449 |
| 1019307 | 1017468 |
| 1019310 | 1017495 |

$1.12 revenue stamps attached to original note secured by this mortgage and cancelled.

The above sale is intended as a mortgage to secure the said First National Bank, of Eugene, Oregon, its successors, assigns or legal representatives the payment of one certain promissory note for the sum of Fifty-six Hundred Dollars, dated March 2, 1916, payable on demand, with interest at 8 per cent per annum from date.

Now, should default be made in the payment of the said principal sum, or any installment of interest thereon, or should the said V. W. Winchell and F. M. Hathaway, sell or dispose of, or attempt to sell or dispose of, or remove or attempt to remove out of said County said property, or any part thereof, without first obtaining the written consent of the said First National Bank, of Eugene, Oregon or suffer the same or any part thereof to be taken on attachment or execution, then it shall be lawful for the said First Nat'l Bank, of Eugene, Oregon, its successors or legal representatives, with the aid and assistance of any person or persons whatsoever, to enter any place or places where the said goods and chattels may be found and to take and carry away the same, and the same to sell or dispose of at public or private sale, as it may see fit, and out of the proceeds arising from such sale to retain and pay the sums above mentioned and the costs and expenses and reasonable charges for making such sale, together with its reasonable attorney's fees, and the overplus, if any there be, pay to the said V. W. Winchell and F. M. Hathaway, their heirs, assigns or legal representatives.

Witness our hands —— this 2d day of March, 1916.

V. W. WINCHELL. [Seal]

F. M. HATHAWAY. [Seal]

In presence of

J. VAN WILSON.

A. W. LIVERMORE.

State of Oregon,
County of Lane,—ss.

On this, the 2d day of March, A. D. 1916, personally came before me, a Notary Public in and for said County, the within named V. W. Winchell and F. M. Hathaway, to me personally known to be the identical persons described in, and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 2d day of March, 1916.

[Notarial Seal] ARCHIE W. LIVERMORE,
Notary Public for Oregon.

My Commission expires Sep. 20, 1919.

Filed for Record Jun: 2, 1919, 3:51 o'clock P. M. S. M. Russell, County Clerk. By P. M. Norton, Deputy.

State of Oregon,
County of Lane,—ss.

I, R. S. Bryson, County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Chattel Mortgage with the original, and that the same is a correct transcript therefrom, and the whole of said original Chattel Mortgage as the same appears of record at page 380, Book No. 7, Lane County Chattel Mortgage Records, now in my official care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 23d day of July, 1919.

[Seal] R. S. BRYSON,

County Clerk and Ex-officio Recorder of Conveyances in and for Lane County, Oregon.

[Endorsed]: U. S. District Court, District of Oregon. Filed Jul. 26, 1919. G. H. Marsh, Clerk.

No. 3436. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 17, 1920. F. D. Monckton, Clerk.